



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: OPR-DR MNR-DR FFL  
For the tenant: CNR RP PSF LRE LAT RR

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 17, 2021(10 Day Notice), for a monetary order of \$1,300.00 for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel the 10 Day Notice, for regular repairs to the unit, site or property, for a rent reduction, for an order for the landlord to provide services or facilities agreed upon but not provided, for an order to restrict the landlord's right to enter the rental unit, site or property, for authorization to change the locks to the rental unit. The tenant had their filing fee waived.

The tenant and the landlord attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having received and reviewed the application and documentary evidence from the other party, I find the parties were sufficiently served in accordance with the Act. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter

are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is to cancel the 10 Day Notice. I find that not all the claims on the tenant's application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- If the 10 Day Notice is upheld, is the landlord entitled to unpaid rent?
- If yes, is the landlord also entitled the recovery of the cost of the filing fee?

### Background and Evidence

A copy of the tenancy agreement and addendum was submitted in evidence. A fixed-term tenancy began on November 1, 2020 and reverted to a month-to-month tenancy after six months. The monthly rent is \$1,200.00 per month and is due on the first day of each month.

The tenant confirmed they received the 10 Day Notice dated May 17, 2021 on May 17, 2021. The tenant disputed the 10 Day Notice on May 21, 2021. The 10 Day Notice indicates that \$1,200.00 was owed as of May 1, 2021. The tenant confirmed they have not paid May 2021 rent.

The landlord stated that the tenant has not paid any rent since April 2021 and owes \$1,200.00 for May, June, July, August and September of 2021.

The tenant claims that the landlord allowed her to pay her rent late, to which the landlord stated that there was no formal agreement that they allowed the tenant to pay later than the first of the month; however, the landlord expects rent to be paid and was willing to give the tenant some leeway before issuing a 10 Day Notice. The tenant claims the 10 Day Notice was served out of spite, which there is no evidence before me to support.

Once the tenant was advised that the tenancy would be ending as the tenant has failed to pay any rent since April 2021 and provided no evidence of having a right under the Act not to pay rent, the tenant began a diatribe alleging breaches of the Act by the landlord and that the rental unit is not legal. As none of those matters relate to the matters before me, the landlord was asked if they had any questions and the tenant hung up at 31 minutes into the hearing. The hearing ended at 36 minutes after the landlord had their questions answered.

The landlord stated that they did not want to offset the amount owing with the security deposit and pet damage deposit as the tenant will have to provide their written forwarding address.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the Act, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. In fact, page two of the 10 Day Notice reinforces this by indicating to the tenant that the Notice may be disputed for specific reasons such as proof rent was paid, etc. In the matter before me, I find the tenant confirmed that they made no attempt to pay rent after being served with the 10 Day Notice. Therefore, **I dismiss** the tenant's application to cancel the 10 Day Notice as

a result. I find that the 10 Day Notice is valid and I uphold the 10 Day Notice as I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act.

**Order of Possession** – The effective vacancy date of the 10 Day Notice was May 27, 2021. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on May 27, 2021 in accordance with the 10 Day Notice.

Pursuant to section 55(4)(b) of the Act, I exercise my discretion to grant the unpaid rent of \$1,200.00 for each of the months of May, June, July, August and September of 2021 ( $\$1,200.00 \times 5 = \$6,000.00$ ) for a total amount of \$6,000.00 to the landlord pursuant to section 26 of the Act, which requires that rent is to be paid on the first day of each month and to date and that the tenant continues to occupy the rental unit. Therefore, pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$6,000.00** May to September of 2021 inclusive as noted above.

As the landlord's application was successful, I also grant the landlord **\$100.00** pursuant to section 72 of the Act for the filing fee.

Given the above, the total monetary order granted is **\$6,100.00**.

### Conclusion

The landlord's application is fully successful.

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended May 27, 2021.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the amount of unpaid rent and filing fee of \$6,100.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties as noted above. The orders will be emailed to the landlord only for service on the tenant.

The tenant is reminded that they may be liable for all enforcement costs related to the orders.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 24, 2021

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Residential Tenancy Branch