



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, RP, FF

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The tenant applied for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- a reduction in monthly rent in the amount of \$1,500;
- an order requiring the landlord to make repairs to the rental unit; and
- to recover the cost of the filing fee.

The tenant and the landlord attended, and both provided affirmed testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

At the beginning of the hearing, the only participant in attendance was the landlord. The landlord provided evidence in support of the Notice.

In response to my inquiry, the landlord submitted that they had not received any evidence from the tenant and therefore was unaware that the tenant had filed evidence.

The landlord submitted that their evidence was served on the tenant 10 days in advance of the hearing.

I note that with few exceptions, the tenant's evidence was filed in the Residential Tenancy Branch (RTB) service portal on the day of the hearing.

After 10 minutes, I informed the landlord I would dismiss the tenant's application and grant the landlord an order of possession of the rental unit.

Before disconnecting, the tenant called into the teleconference hearing, 12 minutes late. Although I informed the tenant the hearing had concluded and that I had made a decision on their application, out of an abundance of caution and in the interest of natural justice and procedural fairness, I allowed the tenant to provide testimony in support of their application and in response to the landlord's Notice.

The tenant explained they called in late as they believed the RTB would call them. Upon reading the instruction letter more closely, the tenant realized they had to call.

In response to my inquiry, the tenant confirmed that they had not sent the landlord their evidence, explaining that they did not because they did not receive the landlord's evidence within 14 days of the hearing.

Although I have excluded most of the tenant's evidence due to their failure to comply with the RTB Rules of Procedure (Rules), I have referred to relevant evidence submitted by the tenant, only as necessary to explain and support the Decision.

In addition, Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the One Month Notice.

I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the One Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application will be addressed within this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice to end the tenancy and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement shows a tenancy start date of November 1, 2019, monthly rent of \$750 due on the first day of the month and a security deposit of \$375 being paid by the tenant to the landlord on October 25, 2019.

The written tenancy agreement also shows that the tenant was required to pay a pet damage deposit of \$375. A notation on the tenancy agreement had the word “owes” by the amount to be paid.

The landlord testified in support of the Notice, issued pursuant to section 47(1) of the Act. The Notice filed in evidence shows a date of May 29, 2021, listing an effective end of tenancy date of June 30, 2021. The landlord said that the Notice was served to the tenant by personal service on May 29, 2021 and the tenant confirmed in their application receipt of the Notice on May 29, 2021.

The causes listed on the Notice alleged that the tenant or person they permitted on the property has caused extraordinary damage to the unit or property, that the tenant has not done required repairs of damage to the rental unit, and that the tenant did not pay the pet damage deposit within 30 days as required by the tenancy agreement.

The landlord referred to the written addendum to the tenancy agreement, or Addendum 2, Pet Deposit, which sets out an installment payment schedule for payment of the pet damage deposit. The tenant was required to pay \$125 in December 2019, and \$125 each in January and February 2020. Filed in evidence was the written tenancy agreement and the 4 page written addendum.

The landlord testified that the tenant has not paid any installment and owes the full amount of \$375 for the pet damage deposit.

Tenant's response –

The tenant said that they paid the full amount of the pet damage deposit in cash. The tenant said that three receipts filed in evidence showed that they paid the pet damage deposit. These receipts referred to by the tenant show a payment of \$750 on January 1, 2020 for the January rent, \$750 on February 1, 2020, for the February rent and \$750 for the March, 2020 rent. The tenant said that the notation on the March 2020, rent receipt, which was "\$40 owing", proves that they paid the pet damage deposit, explaining that meant all but \$40 was paid.

The tenant submitted that they withdrew \$1,000 from their bank account and paid the landlord the monthly rent and the pet damage deposit with that cash.

The tenant also filed a copy of each receipt showing monthly rent payments for the length of the tenancy through September 2021, and a receipt for \$375, for the security deposit payment on October 25, 2019.

The landlord said that the notation for \$40 owing was to indicate the tenant was \$40 short on the monthly rent payment for March 2020. The landlord submitted that any cash received results in a receipt given.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Upon review of the One Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89(1) of the Act.

Section 47(1)(a) of the Act authorizes a landlord to end a tenancy if the tenant has not paid the security deposit or pet damage deposit within 30 days as required by the tenancy agreement.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason indicated on the Notice.

When reviewing the evidence of the landlord, I find that the landlord submitted sufficient evidence to support their Notice. In reaching this conclusion, I look to the tenant's documentary evidence, which included a receipt for each and every payment of the monthly rent for this tenancy and the security deposit. I find this evidence supports the landlord's testimony that they issue a receipt for any money collected from the tenant. As such, I find that the landlord would have issued a receipt for the payment of the pet damage deposit, had it been received.

Additionally, the receipts in question by the tenant show a payment of \$750, the exact amount of the monthly rent, not any additional installment payment for the pet damage deposit. Had that been the case, the tenant's version of events would likely have been supported.

I find the tenant submitted insufficient evidence of any payment towards the pet damage deposit. While the tenant said they withdrew \$1,000 to pay the monthly rent and the pet damage deposit, that evidence was not before me. I would have expected the tenant to have provided bank records showing a \$1,000 withdrawal.

If the tenant had paid the full amount of the pet damage deposit from that withdrawal, her explanation that the notation of \$40 owing does not make sense.

Overall, I favored the landlord's evidence as I find it was consistent, credible, and supported by documentary evidence submitted.

For the above reasons, I find the landlord submitted sufficient evidence to prove on a balance of probabilities that the tenant did not pay the pet damage deposit within 30 days as required by the tenancy agreement.

As I have found the landlord has proven at least one of the causes they listed on the Notice, it was not necessary to consider the other listed causes.

I therefore dismiss the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the Notice is valid, supported by the evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

As the effective date of the Notice has already passed, I find the landlord is entitled to and I grant an order of possession effective two days after service upon the tenant.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement such as **bailiff fees** are recoverable from the tenant.

I dismiss the tenant's request for recovery of the filing fee.

I dismiss the portion of the tenant's application seeking a request for an order requiring the landlord to make repairs without leave to reapply, as the tenancy is ending.

I dismiss without leave to reapply the tenant's request for a monthly rent reduction of \$1,500, as the tenancy is ending and for the reason the monthly rent was \$750.

### Conclusion

For the reasons stated above, the tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective two days after service on the tenant.

The tenant's request for recovery of the filing fee is dismissed, without leave to reapply.

The tenant's request for an order requiring the landlord to make repairs and for a monthly rent reduction of \$1,500 is dismissed, without leave to reapply.

This decision 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 30, 2021

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Residential Tenancy Branch