



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL-4M, CNR, FFT

### Introduction

This hearing was convened as a result of the Tenant's two applications for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The Tenant's first application is for an Order cancelling a 4 Month Notice to End the Tenancy for Demolition, dated April 28, 2021. The Tenant's second application was for an Order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent dated June 4, 2021, and to recover the \$100.00 cost of her Application filing fee.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on June 15, 2021; however, the Tenant did not attend the teleconference hearing scheduled for October 1, 2021 at 11:00 a.m. (Pacific Time). The phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord, who indicated that he was ready to proceed.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord/Tenant and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on October 1, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for minutes, however, neither the Applicant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's applications without leave to reapply.**

### Preliminary Matters

The Tenant provided her email address in her Application, and the Landlord provided his email address in the hearing. The Landlord confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

### Issues

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?

### Background

The Landlord confirmed that the periodic tenancy began on October 1, 2017, with a monthly rent of \$1,250.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$625.00, and no pet damage deposit.

The Landlord said that the Tenant has not paid her full rent since April 2021. The Landlord explained this situation in a letter dated September 17, 2021, which states:

To whom it may concern,

I gave [the Tenant] a 4 month notice to end tenancy due to plans for substantial renovations to the unit in April of 2021. Following this, she started to short the \$1250/month rent by \$200 per month for 4 months consecutively then shorted Sept rent by \$250 for a total to date of \$1050 in arrears. I have provided proof of her history of \$1250/month rent payments via e-transfer and cheques from the government along with evidence of her acknowledging the rent amount of \$1250 per month via text. [The Tenant's] claim that she was 'bullied' from 2017 and had been paying 'extra rent' for 41 months is baseless and absurd.

I am seeking a writ of possession and [the Tenant's] imminent eviction as per the tenancy act.

Respectfully,

[signature]

[Landlord]

The 10 Day Notice was signed and dated June 4, 2021, it has the rental unit address, it was served in person on June 4, 2021, with an effective vacancy date of June 15, 2021, and it was served on the grounds that the Tenant failed to pay \$400.00 of rent when it was due on June 1, 2021. The Landlord said that the Tenant ultimately owed \$200.00 of June's rent by the end of June.

The Landlord submitted a text conversation between him and the Tenant, as follows:

Jul 5, 2019 7:39 AM

[Landlord:] You cancelled the \$200 etransfer.

[Tenant:] I didn't mean to, it wouldn't let me re do it. I'll send it again and you'll have the rest rent Monday.

Jul 5, 2019 8:52 PM

[Tenant:] I'm sending you 130. That will bring me to 590. I will have 660 for you Monday evening.

Jul 9, 2019 4:42 PM

[Tenant:] I'll have your rent check tomorrow after 2....

[reproduced as written]

I find from this exchange that the Tenant has acknowledged that she owes the Landlord \$1,250.00 in rent per month, as \$590.00 + \$660.00 equals \$1,250.00.

This conclusion is supported by another text communication between the Parties on April 21, 2020, as follows:

Apr 21, 2020 4:14 PM

[Tenant:] I e-transfer the 250 for may rent to your email. You should have the 1000 Check today.

Apr 22, 2020 8:51 PM

[Landlord:] Did you send the transfer?

[reproduced as written]

The Landlord said that the Tenant rents the unit for \$1,250.00, including all utilities.

The Landlord testified that a government housing program pays \$1,000.00 of the Tenant's rent, but that the Tenant owes the Landlord the remaining \$250.00 each month.

The following table represents the Tenant's failure to pay her full rent from May 2021 through October 2021, pursuant to the Landlord's testimony in the hearing.

<b>Date Rent Due</b>	<b>Amount Owning</b>	<b>Amount Received</b>	<b>Amount Owning</b>
April notice	\$1,250.00	\$1,250.00	\$0.00
May 2021	\$1,250.00	\$1,050.00	\$200.00
June 2021	\$1,250.00	\$1,050.00	\$200.00
July 2021	\$1,250.00	\$1,050.00	\$200.00
August 2021	\$1,250.00	\$1,050.00	\$200.00
September 2021	\$1,250.00	\$1,000.00	\$250.00
October 2021	\$1,250.00	\$0.00	\$1,250.00
	<b>TOTAL</b>		<b>\$2,300.00</b>

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the

tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

Section 55 (1.1) states that if a tenant disputes a landlord’s notice to end a tenancy, the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content, and I have dismissed the Tenant’s claims without leave to reapply, since she did not attend the participatory hearing to present the merits of her claims. I confirm the Landlord’s 10 Day Notice. Accordingly, I find that the Landlord is eligible for a monetary order pursuant for the unpaid rent outstanding as of the hearing date.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet his burden of proof in this matter. I find that the Tenant did not comply with her obligation to pay rent in full to the Landlord for May through October 2021. Accordingly, I award the Landlord **\$2,300.00** from the Tenant for unpaid rent of May through October 2021, pursuant to sections 46 and 67 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant’s security deposit of \$625.00 in partial satisfaction of the Landlord’s monetary award. I authorize the Landlord to retain **\$625.00** of the Tenant’s security deposit. Further, I award the Landlord a Monetary Order of **\$1,675.00** for the remaining amount owing to the Landlord by the Tenant, pursuant to sections 46 and 67 of the Act.

I find that the Landlord provided sufficient evidence to establish his eligibility for an order of possession of the rental unit, pursuant to sections 46 and 55 of the Act. I grant the

Landlord an **Order of Possession, effective two days after service** of this Order on the Tenant, pursuant to section 55 of the Act.

### Conclusion

The Tenant's two applications are dismissed without leave to reapply, as the Tenant or an Agent for the Tenant did not attend the hearing to present the merits of the applications. The Respondent Landlord's Agent did attend the hearing and provided testimony and presented evidence in the hearing to meet his burden of proof on all matters.

I grant the Landlord a Monetary Order of **\$1,675.00** from the Tenant. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision will be emailed to the address provided by the Landlord in the hearing and to the email address provided by the Tenant in her Application.

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: October 01, 2021

---

Residential Tenancy Branch