



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC  
                              OPU, OPC, MNRL, MNDL, MNDCL, FFL

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on November 5, 2021 concerning applications made by the tenant and by an agent for the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for cause and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement. The landlord's agent has applied for an Order of Possession for unpaid rent or utilities; an Order of Possession for cause; a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord's agent attended the hearing and gave affirmed testimony, indicating that the landlord is his father. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the landlord's application and notice of hearing documents (the Hearing Package) by registered mail on September 11, 2021 and was permitted to provide proof of such service after the hearing had concluded. I now have a copy of a Registered Domestic Customer Receipt addressed to the tenant and a Canada Post cash register receipt dated September 11, 2021 and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Since the tenant has not joined the hearing, I dismiss the tenant's application in its entirety without leave to reapply.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the notice to end the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 23, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 is payable on the 1<sup>st</sup> day of each month, and the tenant is currently in arrears of rent and utilities close to \$12,000.00. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a half duplex, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on July 2, 2021 the landlord's agent taped to the door of the rental unit a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated July 2, 2021 and contains an effective date of vacancy of "August 2<sup>nd</sup>." The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Several 10 Day Notices to End Tenancy for Unpaid Rent or Utilities have also been provided for this hearing:

- The first is dated September 3, 2020 for unpaid rent in the amount of \$1,699.00 that was due on September 1, 2020 and unpaid utilities in the amount of \$221.00 following written demand on September 1, 2020.

- The next is dated September 18, 2020 for unpaid rent in the amount of \$750.00 that was due on September 15, 2020 and unpaid utilities in the amount of \$310.00.
- The next is dated October 6, 2020 for unpaid rent in the amount of \$750.00 that was due on October 1, 2020 and unpaid utilities in the amount of \$37.00 following written demand on October 1, 2020.
- The next is dated November 5, 2020 for unpaid rent in the amount of \$850.00 that was due on November 1, 2020 and unpaid utilities in the amount of \$37.51 following written demand on November 1, 2020.
- The next is dated December 29, 2020 for unpaid rent in the amount of \$947.00 that was due on December 15, 2020.
- The next is dated February 1, 2021 for unpaid rent in the amount of \$1,800.00 that was due on February 1, 2021 and unpaid utilities in the amount of \$112.50 following written demand on February 1, 2021.
- The next is dated March 6, 2021 for unpaid rent in the amount of \$2,550.00 that was due on March 1, 2021.
- The final Notice is dated May 1, 2021 for unpaid rent in the amount of \$4,599.00 that was due on May 1, 2021.

The landlord has also provided a copy of a letter to the tenant dated June 4, 2021 stating that the tenant is in arrears \$272.00 from May, plus \$1,589.00 for June, for a total of \$1,861.00. It states that the landlords agree to not evict the tenant if the tenant maintains the \$1,585.00 per month, plus \$100.00 for arrears until paid in full. The landlord's agent testified that that is not the amount owed, but the landlord's agent was trying to convince his parents (the landlords) to waive the arrears. The tenant needed a letter to give to the Ministry to have the rent paid direct from the Ministry to the landlord. The tenant said she could pay \$100.00 extra until arrears were caught up, which would have taken years, but didn't pay.

The landlord's agent may have mis-read the other reason for issuing the Notice, and testified that several notices have been issued to end the tenancy and the tenant keeps ignoring them.

One of the windows on the property has been pried open, and the tenant took the window out. It has not yet been repaired or replaced.

### Analysis

Firstly, the *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. In this case, I have reviewed the One Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*.

Case law also states that any Notice to end a tenancy given by a landlord must be issued in good faith. The landlord's agent has provided 8 notices to end the tenancy for unpaid rent or utilities, and I find that the landlord has established that the tenant is repeatedly late paying rent. Therefore, I find that the landlord has established that the Notice was given in accordance with the *Act* and in good faith, and I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Because the landlord attempted to settle the unpaid rent, I am not satisfied how much exactly the tenant is in arrears. The landlord must be able to demonstrate what was paid, what was due and when it was paid. In this case, the landlord has not provided a tenant ledger or any break-down of the claims for unpaid rent, and I dismiss the landlord's claim for a monetary order for unpaid rent or utilities with leave to reapply.

A tenant is required to repair any damage caused by the tenant during the tenancy. Since the tenancy has not yet ended, I also dismiss the landlord's applications for a monetary order for damage to the rental unit and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, both with leave to reapply.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord as against the tenant in that amount. I further order that the landlord may keep that amount from the security deposit held in trust, or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the landlord may keep that amount from the security deposit held in trust as full recovery of the filing fee, or may otherwise enforce it.

The balance of the landlord's application is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: November 07, 2021

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Residential Tenancy Branch