



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, MNDCT, LRE, OLC, FFT  
MNR-DR, OPR-DR, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the *Residential Tenancy Act*.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72

The landlord applied for:

- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlords attended the hearing with their property manager, GL. As both parties were present, service of documents was confirmed. Both parties acknowledged being served with one another's Notice of

Dispute Resolution Proceedings packages and neither party stated they had any concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

#### Preliminary Issue

Rules 6.1, 6.2 and 2.3 pertain to the hearing of a dispute resolution proceeding, reproduced below.

#### **6.1 Arbitrator's role**

The arbitrator will conduct the dispute resolution process in accordance with the *Act*, the Rules of Procedure and principles of fairness.

#### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The landlord's application seeking an order of possession/monetary order based on unpaid rent is sufficiently related to the tenant's application of seeking to cancel the notice to end tenancy for unpaid rent. As such, the primary issue to be decided at this hearing would be the notice to end tenancy for unpaid rent. I determined that the tenant's other issues were not sufficiently related to the primary issue and I dismissed them with leave to reapply pursuant to rules 2.3 and 6.2.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Should the landlord be compensated for unpaid rent?

Can either party recover the filing fee?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord's agent gave the following testimony. This tenancy began with previous landlords on May 1, 2017, with rent set at \$1,525.00 per month payable on the first day of each month. A copy of the tenancy agreement with the previous landlord was provided as evidence. A security deposit of \$762.50 was collected by the previous landlord and forwarded to the current landlords and is currently being held by them. The landlord testified that since purchasing the property, they have not increased the tenant's rent and it remains at \$1,525.00 per month.

The landlord's agent testified that the last time they received rent was in the month of August. The tenant did not pay rent on September 1<sup>st</sup>, when it was due. On September 2<sup>nd</sup>, the landlord's agent (present for today's hearing) served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting it to the tenant's door. A signed, witnessed proof of service document was provided as evidence, as was a copy of the notice to end tenancy (the "notice").

The notice states that the tenant failed to pay rent in the amount of \$1,525.00 plus a late fee of \$25.00. The landlord's agent testified that they do not seek to recover the \$25.00 late fee as late fees were not specified in the tenancy agreement. The landlord testified that since serving the notice to end tenancy, the tenant has failed to pay the outstanding rent for September or any rent whatsoever through to the date of this hearing in January. The landlord seeks a monetary order for rent for the months of September 2021 to January, 2022.

The landlord DH testified that he is the owner of the property with the co-landlord WH. The third person named on his application as landlord is their daughter who has a minority share in the ownership of the property. He and the co-landlord WH have been the tenant's landlord since purchasing the rental unit. DH has given written

authorization to the property management company representing him at this hearing to *Act* as his agent. A copy of the first page of the contract between the landlord and the property management company was provided as evidence by the landlord.

The tenant provided testimony, as well. During her testimony I had to remind the tenant that I would review any specific pieces of evidence that she drew my attention to during the hearing in accordance with rule 7.4 of the rules of procedure. Despite this, the tenant continued with her testimony and repeatedly asked me to look at all of her evidence (85 files, 522 pages). Although the tenant tried to refer me to some specific pieces of evidence during testimony, the names of the documents she referred to did not match any of the names as specified in her .pdf documents. During the hearing, I advised the tenant that I was unable to locate the documents she was referring to, but I was willing to allow her to describe their contents.

The tenant acknowledges receiving the landlord's notice to end tenancy on September 2<sup>nd</sup>. It was served while she was engaged in a dispute resolution hearing with another arbitrator. The file number for the previous hearing is recorded on the cover page of this decision.

The tenant acknowledges that after receiving the notice to end tenancy, she did not pay the outstanding arrears for September's rent. The tenant further acknowledges she did not pay rent for any subsequent months. When I asked the tenant why she didn't pay rent, the tenant responded it was because she believes she is entitled to withhold the rent because the landlord is not providing her with quiet enjoyment of the rental unit. The nature of the reason for withholding rent is related to her application for a monetary order which refers to allegations of harassment, the landlord illegally raising her rent, and giving her "continuous illegal evictions".

The tenant testified that she does not have an order from an arbitrator of the Residential Tenancy Branch allowing her to withhold rent.

The tenant also argues that the landlords have no standing to issue the notice to end tenancy as there are issues with the tenancy agreement. The tenant states that the original tenancy agreement with the previous landlords lists two tenants: herself and a co-tenant who moved out in June of 2018. In January of 2020, the previous owners sought to have a new tenancy agreement signed, adding a roommate as a co-tenant, however that person moved out. When the new owners purchased the rental unit, no new tenancy agreement was signed with them.

### Analysis

Based on the evidence before me, I find that the tenant's former landlords are not parties to this dispute regarding the ending of the tenancy or arrears in rent accruing since the rental property was purchased by the landlords who filed the application for an order of possession. As such, I amend the tenant's application for dispute resolution to remove the previous landlords pursuant to Rule 4.2 of the rules of procedure. The former landlords' names will not appear on the cover page of this decision.

The tenant acknowledges receiving the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on September 2<sup>nd</sup>, the day it was posted to her door. She filed an application to dispute the notice on September 5<sup>th</sup>, within the required five-day timeframe.

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 this 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.*

While the tenant has justified the withholding of rent for what she perceives to be the landlord's failure to provide her with quiet enjoyment of the rental unit, she does not have a right under the Act to deduct all or a portion of the rent. In fact, at the September 02, 2021 hearing, the tenant's application sought "*monetary compensation for loss of quiet enjoyment due to the three Notices served by the respondents*" which was dismissed **without leave to reapply** by a previous arbitrator. The landlord provided a copy of that decision in the tenant's dispute resolution file at pages 13-22. To be clear, the tenant cannot withhold rent when the tenant perceives the landlord is not complying with the *Act*, regulations or tenancy agreement. Only armed with an order of an arbitrator is a tenant within the right to withhold rent. This tenant does not have such an order. Nor does the tenant have the right to reapply for such relief.

The tenant's second argument regarding the landlord's standing to issue the notice to end tenancy is based on groundless reasoning. Section 1(a) of the *Act* defines a landlord, in relation to a rental unit, as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, (i)permits occupation of the rental unit under a tenancy agreement, or (ii)exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement. Section 93 states that the obligations of a landlord under this *Act* pass with transfer or assignment of land.

The landlords became the tenant's landlord by virtue of purchasing the rental property. The property management company was exercising the powers and performances of the owners of the rental unit (the landlord) in issuing the notice to end tenancy. There is no question in my mind as to whether the landlords or their agent were the proper parties to issue the notice to end tenancy. Clearly, they were within their right to do so. The tenant argues that the co-tenant named on the tenancy agreement had vacated the rental unit in 2018 and no new tenancy agreements were signed with the previous landlord or this one. The fact that only one of two co-tenant remains living in the rental unit does not mean the landlord is prevented from ending the tenancy for unpaid rent from the remaining tenant.

Based on the evidence before me, I find that the tenant did not have a right under the *Act* to deduct all or a portion of the rent. The tenant failed to pay her rent as required under section 26. The tenant, having been served with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, did not pay the arrears in rent within five days of receiving the Notice, contrary to section 46 of the *Act*. Consequently, I uphold the landlord's notice to end tenancy. As the effective date stated in the notice to end tenancy has passed, I issue an order of possession effective two days after service upon the tenant.

The parties agree that the tenant has not paid rent for the months of September right through January. Rule 4.2 of the rules of procedure allows an arbitrator to amend an application in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the application for dispute resolution was made. I amend the landlord's application to include unpaid rent for the months of September through January [ $\$1,525.00 \times 6 \text{ (months)} = \$7,625.00$ ]. I grant a monetary order in the landlord's favour in that amount.

The landlord's application was successful and the tenant's was not. The landlord is entitled to recover the filing fee of \$100.00.

The landlord continues to hold the tenant's security deposit in the amount of \$762.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entirety of the tenant's security deposit in partial satisfaction of the monetary claim.

Item	Amount
Rental arrears from September, 2021 to January, 2022	\$7,625.00
Filing fee	\$100.00

Less security deposit	(\$762.50)
Total	<b>\$6,962.50</b>

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$6,962.50**. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 19, 2022

---

Residential Tenancy Branch