



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNRT, LRE, OLC, FFT

### Introduction

On September 13, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation for emergency repairs pursuant to Section 33 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with S.P. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by email on or around September 22, 2021. S.P. confirmed that the Landlord received this package by email, and he had no position with respect to the manner with which this package was served. As such, I am satisfied that the Landlord has been duly served the Tenant’s Notice of Hearing package.

The Tenant advised that he included his documentary evidence with the Notice of Hearing package; however, S.P. stated that there was no evidence included. As there is no definitive proof that the Tenant's evidence was included with the Notice of Hearing package, I am not satisfied that the Tenant sufficiently served his evidence. As such, I have dismissed this evidence and will not consider it when rendering this Decision.

S.P. advised that he did not serve the Landlord's evidence to the Tenant because he believed the Tenant already was in possession of these documents. As this evidence was not served to the Tenant in accordance with the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 3, 2021, that the rent was currently established at an amount of \$2,495.00 per month, and that it was due on the first day of each month. A security deposit of \$1,247.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

S.P. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on September 13, 2021 by hand. The Tenant confirmed that he received this and that despite the name on the Notice being incorrect, he acknowledged that it was for him. S.P. testified that \$4,990.00 was owing for rent on September 1, 2021 because the Tenant did not pay August or September 2021 rent. Thus, the Notice was served. In addition, S.P. stated that the Tenant has not paid any rent for October, November, and December 2021 or for January 2022. Therefore, in addition to an Order of Possession, the Landlord is also seeking a Monetary Order in the amount of **\$14,970.00** for rental arrears. The effective end date of the tenancy was noted on the Notice as September 13, 2021, which was incorrect pursuant to Section 46 of the *Act*.

The Tenant confirmed that he did not pay the rent for August or September 2021 and that he has not paid any rent since. He claimed that the Landlord offered him August 2021 rent for free on the condition that he sign a Mutual Agreement to End Tenancy to move out by August 31, 2021. However, despite this agreement, he did not move out, yet he expects to still receive this compensation. In addition, he claimed that he paid for what he considered to be an emergency repair, but this was only \$120.00.

The Landlord acknowledged that he agreed to compensate the Tenant for August 2021 rent on the condition that he move out on August 31, 2021 pursuant to the Mutual Agreement to End Tenancy. As well, he advised the Tenant that he would reimburse him for the electrician bill, but the Tenant never asked for this compensation and never provided the Landlord with a receipt.

The Tenant then confirmed that he signed the Mutual Agreement to End Tenancy and that the compensation of August 2021 rent was contingent on him moving out on August 31, 2021. As well, he agreed that the Landlord offered to pay for the electrician, but he did not provide the Landlord with a copy of this invoice.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy

agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served the Notice on September 13, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was served on September 13, 2021, the Tenant must have paid the rent in full by September 18, 2021 or disputed the Notice by Monday September 20, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full by September 18, 2021 to cancel the Notice. While the Tenant disputed this Notice on time, I am not satisfied that he had any authority to withhold the rent. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

In addition, I am satisfied that the Landlord is entitled to a monetary award for the rental arrears for August, September, October, November, and December 2021, and January 2022. As such, I grant the Landlord a monetary award in the amount of **\$14,970.00**.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears for August 2021	\$2,495.00
Rental arrears for September 2021	\$2,495.00
Rental arrears for October 2021	\$2,495.00
Rental arrears for November 2021	\$2,495.00
Rental arrears for December 2021	\$2,495.00
Rental arrears for January 2022 rent	\$2,495.00
Filing Fee	\$100.00
Security deposit	-\$1,247.50
<b>Total Monetary Award</b>	<b>\$13,822.50</b>

#### Conclusion

The Tenant's Application for Dispute Resolution with respect to the cancellation of the Notice is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$13,822.50** 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 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 25, 2022

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Residential Tenancy Branch