



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenant's:    **DRI, CNR, RP, RR, OLC**  
Landlord's: **MNR-DR, OPR-DR, FFL**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order to dispute a rent increase pursuant to Sections 43 and 62 of the Act;
2. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
3. An Order for the Landlord to make repairs to the unit pursuant to Section 32 of the Act;
4. An Order for a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to Section 27; and,
5. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

This hearing also dealt with, by cross-application, the Landlord's application pursuant to the Act for:

1. An Order of Possession for Unpaid Rent pursuant to Sections 46 and 55 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, SB, Witness, PR, and the Tenant, TH, attended the hearing at the appointed date and time. Both parties were

each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant could not restrain himself from laughing out loud while PR was giving his evidence. I asked the Tenant to restrain himself. The Tenant requested I mute his telephone line while PR was providing his testimony. I muted the Tenant's line so that I could hear PR's testimony without interruption. After PR's testimony was completed, I un-muted the Tenant's line.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served a 10 Day Notice on November 17, 2021 and provided proof of service of that document (the "10 Day Notice-November"). The Tenant confirmed receiving the 10 Day Notice-November. I find that the 10 Day Notice-November was served on the Tenant on November 17, 2021 pursuant to Section 88(a) of the Act.

The Landlord personally served a second 10 Day Notice on December 20, 2021 and provided proof of service of that document (the "10 Day Notice-December"). The Tenant confirmed receiving the 10 Day Notice-December. I find that the 10 Day Notice-December was served on the Tenant on December 20, 2021 pursuant to Section 88(a) of the Act.

The Landlord personally served a third 10 Day Notice on January 2, 2022 and provided proof of service of that document (the "10 Day Notice-January"). The Tenant confirmed receiving the 10 Day Notice-January. I find that the 10 Day Notice-January was served on the Tenant on January 2, 2022 pursuant to Section 88(a) of the Act.

The Tenant applied for dispute resolution on November 5, 2021 in response to a 'Notice of Tenancy Agreement Termination' served on the Tenant on November 2, 2021. I found this notice to be of no force or effect (see Preliminary Matters below). The Tenant personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 10, 2021 (the "NoDRP package"). The Tenant sought dispute resolution for the invalid notice of tenancy agreement termination, and for the other claims listed above. The Landlord confirmed receipt of the NoDRP package on November 12, 2021. I find that the Landlord was served with the

documents for this hearing on November 12, 2021, in accordance with Sections 88(a) and 89(1)(a) of the Act.

The Landlord served on the Tenant her Notice of Dispute Resolution Proceeding package for this hearing via Canada Post registered mail on December 22, 2021 (the “NoDRP package-OP/MN”). SB referred me to the Canada Post registered mail tracking numbers as proof of service. I have noted the registered mail tracking numbers on the cover sheet of this decision. The Tenant confirmed receipt of the NoDRP package-OP/MN. I find that the Tenant was deemed served with the documents for this hearing five days after mailing them, on December 27, 2021, in accordance with Sections 88(c), 89(1)(c) and 90(a) of the Act.

### Preliminary Matters

#### **Parties Named in the Applications**

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. The Tenant’s application only named himself against the Landlord, while the Landlord’s cross-application named the Tenant and another person. The Landlord said this other person has been living in the rental unit for seven months and she felt she was obliged to name her on the Landlord’s application. The Tenant said this person lives with him but is not a tenant. This person does not pay any utility bills or the rent. Furthermore, the tenancy agreement only names the Tenant as the responsible person. The Landlord did not object to just naming the Tenant as a legal party in this application.

I find that this application and cross-application is legally between the Landlord and the Tenant only as reflected in the tenancy agreement and incorrectly names a person not a party to this dispute. I find making this amendment will neither prejudice either party in this matter nor result in a breach of the principles of natural justice. I have amended the Landlord’s application, and correctly named just the Tenant as the opposing party in her application. The proper parties’ names are reflected in the style of cause of this decision.

#### **Notices to End Tenancy Not in Compliance with the Act**

The Landlord personally served a typed notice titled ‘Notice of Tenancy Agreement Termination’ on the Tenant on August 16, 2021. Section 52(e) says that *[I]n order to be effective, a notice to end a tenancy must be in writing and must when given by a*

*landlord, be in the approved form.* This notice to end tenancy was not given in the approved form pursuant to Section 52(e) of the Act. I find that this notice is of no force or effect.

The Landlord personally served a second typed notice titled 'Notice of Tenancy Agreement Termination' on the Tenant on November 2, 2021. This notice to end tenancy also was not given in the approved form, as explained above, pursuant to Section 52(e) of the Act. I find that this notice is of no force or effect.

### **Amendment of Application At the Hearing**

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's request to amend her original application from \$2,200.00 to \$3,300.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### **Issues to be Decided**

For the Tenant:

1. Is the Tenant entitled to an Order disputing a rent increase?
2. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
4. Is the Tenant entitled to an Order for the Landlord to make repairs to the unit?
5. Is the Tenant entitled to an Order for a reduction in rent for repairs, services or facilities?
6. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?

For the Landlord:

1. Is the Landlord entitled to an Order of Possession for Unpaid Rent?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on May 1, 2020. Monthly rent was \$1,000.00 payable on the first day of each month. The Landlord testified that the Tenant voluntarily increased the rent amount to \$1,100.00 beginning on January 1, 2021 and provided the Landlord with a note that stated:

*NOVEMBER 20, 2020*

*I, [Tenant], voluntarily agree to pay [Landlord] \$1100 rent per month commencing January 1, 2021.*

*[Signed by the Tenant] Nov 20/2020*

The Tenant submitted this notice of rent increase in writing to the Landlord on November 20, 2020 and it was uploaded into the Landlord's documentary evidence. The Tenant's reason for giving the Landlord a rent increase was that he was doing it out of the goodness of his heart. The Tenant further confirmed the \$1,100.00 rent amount in an email dated August 24, 2021. In the August 24, 2021 email, the Tenant writes:

*I do not intend to have another pet here so I am asking for my pet deposit back.*

*The security deposit is only allowed to be half the rent legally sonl am asking for the \$500 illegal portion. Returning these monies to me should not be onerous as they are legally to be held aside and unspent for me when I leave under whichever circumstances.*

This email was uploaded in the Tenant's documentary evidence. The Tenant has paid \$1,100.00 for rent since January 1, 2021 until he stopped paying rent in November 2021.

At the hearing, the Tenant states the rent amount is \$1,000.00. The Tenant submitted into his documentary evidence a Ministry of Social Development and Poverty Reduction Shelter (the "MSD") Information form dated May 11, 2020 which outlines that the accommodation monthly rent is \$1,000.00 which includes utilities. The Shelter

Information form also specifies that \$1,000.00 is required for a security deposit and \$500.00 is required for a pet damage deposit. The Tenant also included in his documentary evidence a signed note from the Landlord confirming receipt of \$1,000.00 for rent for May 2020 and \$1,000.00 for a security deposit, it notes the \$500.00 pet damage deposit is still outstanding.

The Landlord testifies that she holds no security deposit paid by the Tenant. At the beginning of the tenancy, the Landlord and the Tenant verbally agreed that in lieu of a security deposit of \$1,000.00, the Tenant was to paint the upstairs, and sand and varnish some stairs. The Tenant wanted to move in sooner rather than later, and agreed to complete this work. The Landlord provided materials for this work. As of the date of this hearing, this work remains outstanding, and the Tenant has never paid the security deposit. She wonders if the Tenant received the security deposit money from the MSD, as she has not.

The Landlord wrote in her documentary evidence that a pet damage deposit of \$500.00 was collected on June 1, 2020. The Landlord reported in her documentary evidence that she has a large bill automatically withdrawing from her bank account at the end of each month and she relies on the Tenant's rental payment of \$1100 to meet this obligation.

In July 2021, the Tenant brought in a new occupant to the rental unit. An addendum to the tenancy agreement states in part:

...

*4. Landlord must approve any additional full time tenant/s and the rent will increase to a mutually agreed amount at that time.*

...

The Landlord testified that she verbally negotiated a new rent amount with the Tenant for the new occupant, and submitted that the Tenant verbally agreed to pay \$300.00 per month for the additional occupant for a total of \$1,400.00 per month. The Landlord excused the increased rent amount for the month of July 2021, and the new \$1,400.00 rent amount was to begin on August 1, 2021. On August 1, 2021, the Tenant paid \$1,100.00 for rent and refused to pay the extra \$300.00 for the additional occupant which the Landlord submits they verbally agreed on.

By August 16, 2021, the Landlord had served the Tenant with a Notice of Tenancy Agreement Termination, which I previously found of no force or effect. Witness, PR, said in August he came to the Landlord's assistance as a peacemaker. He testified that he sat in the Landlord's home with the Tenant who promised he would pay the

\$1,100.00 per month for rent as he agreed, and stated that the Landlord cannot raise the rent at all until December 31, 2021. The following document was signed by the Tenant, Landlord, and Witness:

*August 24, 2021 Revised Addendum for rental suite at (as identified in this dispute)*

*[Tenant] stated that he will pay the \$1100 by the first of each month and had quit smoking but if he starts again he will do his best to do it far away from [Landlord]'s property.*

*It was agreed that if he/they are still in the suite for January 2022 (Although he plans on moving out before then) there will be an increase in the rent which will be mutually determined at that time.*

*[Tenant] voluntarily stated that they would no longer be using the house washing machine.*

*SIGNED*

*[Tenant]*

*DATE AUGUST 26, 2021*

*SIGNED*

*[Landlord]*

*DATE AUGUST 26, 2021*

*WITNESSED*

*[Witness name]*

*DATE AUGUST 26, 2021*

The Landlord testified that the Tenant has not paid rent for the months of November 2021, December 2021 and January 2022. The Tenant confirmed that these months remain unpaid, and he testified that he has not received authorization from an RTB decision that he can withhold rent for repairs or any other matter. The outstanding rent amount is:

<b>RENT</b>	Rent Owning	Rent/Partial Amount Paid	O/S Rent Total
November 2021	\$1,100.00	\$0.00	\$1,100.00
December 2021	\$1,100.00	\$0.00	\$2,200.00
January 2022	\$1,100.00	\$0.00	\$3,300.00

The Landlord testified that based on estoppel, the Tenant must pay \$1,100.00 per month for the outstanding months' rent. The Landlord seeks an Order of Possession and a Monetary Order totalling \$3,300.00 for unpaid rent for the rental unit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 26(1) 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.

The Tenant testified that he did not have authorization from the Director to withhold or deduct rent; consequently, I find that the Tenant did not have any formal orders from the RTB to holdback a portion of the rental amount in any case.

The Tenant promised in writing on November 20, 2020 that he would pay \$1,100.00 per month for rent beginning on January 1, 2021. Since January 1, 2021, the Tenant has paid \$1,100.00 for rent from January 1, 2021 to October 1, 2021. Section 43(1)(c) of the Act states that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. The Tenant testified that out of the goodness of his heart, he agreed in writing to pay the Landlord \$1,100.00 per month for rent beginning in the month of January 2021.

In *Trial Lawyers Association of British Columbia v. Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 (CanLII), the equitable doctrine of promissory estoppel was explained:



[15] *Promissory estoppel is an equitable defence whose elements were stated by Sopinka J. for this Court in Maracle, at p. 57:*

*The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the [promisee] must establish that, in reliance on the [promise], he acted on it or in some way changed his position. [Emphasis added.]*

*The equitable defence therefore requires that (1) the parties be in a legal relationship at the time of the promise or assurance; (2) the promise or assurance be intended to affect that relationship and to be acted on; and (3) the other party in fact relied on the promise or assurance. It is, as we will explain, implicit that such reliance be to the promisee's detriment.*

The Tenant paid this amount for most of the year. The Landlord reports that she relies on her rental income for a big automatic withdrawal from her bank at the end of each month. I find that, based on promissory estoppel, the Landlord can rely on the promised rent increase the Tenant imposed on himself going forward from January 1, 2021. I find the Landlord has relied on the Tenant's promise of the increased rent amount and his conduct afterwards where he always paid the \$1,100.00 at the beginning of the months. The Landlord has relied on receiving this amount, and not receiving it results in a legal detriment to the Landlord as she uses it to cover a financial obligation that automatically come out of her bank account each month. Equity requires enforcement of the \$1,100.00 per month rental payment and I find that the Tenant's rent increased in January 2021 further to his November 2020 promise.

The Landlord said the Tenant has not paid any security deposit. Instead, the Tenant was to complete some cosmetic construction work in the rental unit in lieu of this payment. The Landlord provided materials to the Tenant to complete the work. The Tenant did not complete the work.

The Tenant provided a May 2020 document in his documentary evidence that the Landlord stated she received the \$1,000.00 as a security deposit. A proper security deposit for a \$1,000.00 per month rental unit would be \$500.00, half a month's rent. The tenancy began in May 2020, and I find that the Landlord was trying to be helpful and supportive to the Tenant in confirming this amount to the MSD was paid to her to assist him with his social assistance application.

I find the Landlord's evidence about the security deposit more credible. I believe that circumstances at the beginning of the tenancy were such that the Tenant wanted to move in the rental unit as soon as possible and agreed to complete the minor construction work in lieu of paying the security deposit. I find that the Landlord has not received \$1,000.00 for the security deposit on the rental unit.

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

- 46 (1) *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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (4) *Within 5 days after receiving a notice under this section, the tenant may*
- (a) pay the overdue rent, in which case the notice has no effect, or*
  - (b) dispute the notice by making an application for dispute resolution.*
- (5) *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*
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) must vacate the rental unit to which the notice relates by that date.*

The Landlord applied for dispute resolution on December 16, 2021 based on her November 17, 2021 10 Day Notice. The Tenant had 5 days after receiving the 10 Day Notice-November to either pay the overdue rent or apply for dispute resolution. Day 5 after service of the 10 Day Notice-November was November 22, 2021. The Tenant did not pay the outstanding rent and did not dispute the 10 Day Notice-November. I find the 10 Day Notice-November submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act. I also find that the Tenant neither paid the outstanding rent within the 5 days provided in Section 46(4)(a) of the Act nor applied for dispute resolution of the notice pursuant to Section 46(4)(b) of the Act.

In accordance with Section 46(5), I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which

was November 27, 2021 and must vacate the rental unit pursuant to Section 55 of the Act. I dismiss the Tenant's application in its entirety without leave to re-apply.

As the Tenant failed in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(2) of the Act reads as follows:

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I find that based on the Landlord's testimony of when rent was owing, and what rent was paid, and based on the conclusive presumption that the tenancy has ended, it is the Landlord's right to seek an Order of Possession for unpaid rent. I grant an Order of Possession to the Landlord pursuant to Section 55(4)(a) of the Act which will be effective two (2) days after service on the Tenant.

I find that the amount of unpaid rent is \$3,300.00. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the pet damage deposit held by the Landlord in partial satisfaction of the monetary award.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$2,900.00, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$3,300.00
Less pet damage deposit:	-\$500.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$2,900.00

Conclusion

The Landlord's 10 Day Notice-November is upheld, and I grant an Order of Possession to the Landlord effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$2,900.00. 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 of British Columbia 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 Act.

Dated: January 25, 2022

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Residential Tenancy Branch