



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR, FFT, OLC, MNDCT, RR, LRE, PSF, DRI**

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- To dispute a 10-day notice to end tenancy issued for unpaid rent;
- For an order directing the landlord to comply with the *Act*;
- For compensation for monetary loss or other money owed;
- To reduce rent for repairs, services or facilities agreed upon but not provided;
- To suspend or set conditions on the landlord’s right to enter the rental unit or site;
- For the landlord to provide services or facilities required by the tenancy agreement or law;
- To dispute a rent increase that is above the amount allowed by law; and
- For a return of the filing fee

The landlord, their counsel R.T. and the tenant attended the hearing. All parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord’s 10 Day Notice after it was posted on his door. I find the tenant to have been served with this notice in accordance with section 89 of the *Act*.

The tenant confirmed receipt of the landlord’s evidentiary package and is found to have been served in accordance with section 88 of the *Act*. The tenant confirmed no evidence was sent in support of his application. The landlord confirmed receipt of the tenant’s application for dispute and is found to have been served in accordance with section 89 of the *Act*.

The parties affirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Rule of Procedure 6.2 notes, “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, 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.”

I find that the tenant has raised numerous issues which may materially affect the tenancy. I find that it may be important for these matters to be heard separately and I consider the Notice to End Tenancy issued to be of most pressing concern. Pursuant to Rule of Procedure 2.3 I sever these issues and will consider only the tenant’s application for a cancellation of the Notice and the tenant’s claim for a monetary award, along with a return of the filing fee. The remainder of the issues identified above, are dismissed with leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to a cancellation of the 10-day notice? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award? Can the tenant recover the filing fee?

#### Background and Evidence

The parties agree that the tenancy began on October 28, 2011. The parties disagreed on the amount of rent which was due. The landlord alleged rent was \$49.00 per night plus GST, making the total \$51.45 per night, while the tenant understood rent to be \$40.00 per night absent of GST. The tenant stated a security deposit of \$500.00 was paid, however, the landlord disputed this. The landlord explained that a variety of nightly rates have been paid throughout the course of the tenancy.

A copy of a document submitted in evidence by the landlord titled ‘D.R. Registration Card’ notes an arrival date of August 1, 2021 and a departure date of March 1, 2022. It contains the room number and street address identified in this application and the tenant’s name. Under the section marked ‘Daily Rate’ it shows 0.00.

The document is otherwise unsigned, and blank and contains some template information related to a check-out time of 11:00 a.m., limitations of liability and fines associated with smoking.

As part of their evidentiary package, the landlord supplied several letters detailing this unorthodox tenancy arrangement. They are as follows:

January 1, 2016 – “Please accept this letter as notice that our rate increase will take place in (sic) February 01 2016, your current nightly rate of \$69.00 will increase to \$74.00.” – signed by K.M., general manager

March 15, 2017 – “Please accept this letter as notice that our rate increase will take place on May 01, 2017, your current nightly rate of \$74.00 will increase to \$78.00” – signed by K.M., general manager

May 10, 2021 –

Please see the attached invoices which are all due at this point. Can you please pay the Balance? As I have mentioned previous, we require only some payment as outstanding. It is on me that is securing the room, as there are always Multiple folios open. We need to close at least 3-4 folios.

Also starting 01<sup>st</sup> June 2021 – the room rate is \$49.00 plus gst/per night (\$51.45 per night). I will not be able to do complimentary room nights that I was throwing in as a good will gesture. I got in trouble for doing so. Will discuss more when I see you. – signed by V.G.

In addition to the above evidence, submissions were made by counsel for the landlord that the tenant has paid:

- \$59.00 per night in 2015
- \$82.00 per night in 2019
- \$49.00 per night in December 2020

When asked to explain the difference in amounts, the landlord said that the price was reduced in December 2020 due to the Covid-19 pandemic. The tenant argued a verbal agreement was in place between the parties that required him to pay rent of \$40.00 per night.

A letter dated February 18, 2017 from the property’s general manager to the tenant states as follows, “Please consider this as confirmation that your account at the Hotel is cleared for 2016. There are no outstanding amounts owing.”

While a letter dated June 29, 2021 states:

After discussion with Head Office, I would like to confirm that the GST on the room charge will still be applicable to the nightly rate. Only the MRDT/PRT taxes are exempt from the charges.

Instead of doing any increase in the rate, we will still keep it at \$49.00 plus GST until the 31<sup>st</sup> July 2021.

Please find attached the invoices that are owing: May I kindly request payment as your account is over due since April. The balance on the room is \$3685.29

On September 21, 2021 the landlord posted a 10 Day Notice for unpaid rent on the tenant's door. The notice listed an amount of \$1,716.96 as outstanding. The tenant has applied for a cancellation of this notice along with a monetary award of \$31,000.00.

The tenant acknowledged having failed to pay rent pursuant to the notice, however, he argued he had overpaid rent in the form of unauthorized daily GST payments and thus sought a return of those funds in the form of his \$31,000.00 monetary claim. Further, he said that he had received no invoices indicating to him what was due, and he disagreed with the amounts that were discussed between him and the management.

The rental unit is contained within a hotel that forms part of large, multi-national hotel group. Some submissions were made by counsel for the landlord related to the applicability of the *Residential Tenancy Act* to this matter. Specifically, the landlord said there was no security deposit paid, rent was not pre-paid, no notice period was required to terminate the arrangement, bills were provided inclusive of GST and that no tenancy agreement was signed by the parties. When asked why the landlord issued a 10 Day Notice if they felt the arrangement was outside the scope of the *Act*, counsel for the landlord said they did so out of "precaution."

The tenant explained this was his full time and only home, that he received mail at the address, and it is the address that appears on his driver's license.

As part of their evidentiary package the landlord supplied a letter dated January 26, 2022. This letter is reproduced in its entirety:

Mr. R. as requested in concern to your letter on the 25<sup>th</sup> January 2022, please note below for the requested information.

The Total amount paid so far to the hotel since check-in is Room Charges (\$228,905.00) + (\$31,030.73) GST/PST/PRT (prt for certain period) minus (-) the credit \$5666.90 to account (Refund + Complimentary nights to reconcile the extra taxes charges) = **Total of \$ 254,268.83.**

The landlord included several invoices in the tenant's name which note arrivals and departures as follows and include amounts due and amounts refunded:

- August 1, 2021 to March 1, 2022 balance owing \$7,974.75

Room rate \$49.00/night + \$2.45 GST

- July 8, 2016 to February 18, 2017 balance owing \$0.00

I note the invoice for the dates of 2016 and 2017 display various 'Room Revenue Adjustment'(s) of \$200.00, \$454.00, and \$99.00, while also include refunds of \$10.00 GST, \$22.70 GST, \$9.90 GST, and \$4.95 PRT ("Provincial room Tax").

### Analysis

After having considered the testimony of the parties and following a review of the evidence, it is clear this is not a standard tenancy.

Having severed a majority of the tenant's application pursuant to Rule of Procedure 2.3, I am left to consider whether the 10 Day Notice for unpaid rent should be upheld, if the tenant is entitled to a monetary award and whether this tenancy in fact falls within the realm of the *Act*.

The issue of jurisdiction was broached by the landlord. While I accept their submissions that amongst other things that no tenancy agreement was signed, I find the parties have an implied tenancy pursuant to the definition contained within Section 1 of the *Act* and that a signed tenancy agreement or payment of a security deposit are not necessary to form a tenancy.

Section 1 defines a tenancy agreement as "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit."

In this case before me the evidence presented shows that, the tenant has paid an inconsistent amount of "rent" to have exclusive possession of a rental unit and has done so for 11 years. The tenant has no other home, has his mail delivered to the address in question and has his driver's license registered to the address. Further, I find the landlord meets the definition provided in section 1(a)(i) as being "the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement." For the reasons stated above, I find this arrangement between the parties to be an implied tenancy.

Further evidence of the applicability of the *Act* is contained in *Residential Tenancy Policy Guideline #27* which considers the issue of jurisdiction. It notes:

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- Whether the agreement to rent the accommodation is for a term;
- Whether the occupant has exclusive possession of the hotel room;
- Whether the hotel room is the primary and permanent residence of the occupant.
- The length of occupancy.

Even if a hotel room is operated pursuant to the *Hotel Keeper's Act*, the occupant is charged the hotel room tax, or the occupancy is charged a daily rate, a tenancy agreement may exist. A tenancy agreement may be written or it may be oral.

As mentioned previously and based on the testimony of the parties, I find the tenant has exclusive possession, that the hotel room is his primary and permanent residence and that the length of occupancy is substantial (11 years), therefore, I find the parties have formed a tenancy under the *Act*. Even if I were to find that the parties did not have a tenancy but rather a license to occupy, I find the same factors as noted below would be considered.

In keeping with this finding, I must therefore consider where the 10 Day Notice issued on September 21, 2021 for unpaid rent of \$1,716.96 is valid. On several occasions during the hearing counsel for the landlord highlighted that the tenant had failed to pay any rent following the issuance of this notice and had acknowledged failing to do so.

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."

While I accept that rent must be paid whether or not the landlord complies with the *Act*, I find a key element of section 26(1) to be "when it is due." A review of the landlord's evidence demonstrates there has been no consistency as to when rent on this unit is due. I find the landlord has failed to prove why this 10 Day Notice should be found to be valid.

The May 10, 2021 correspondence from the landlord to the tenant as reproduced on page 2 of this decision stated explicitly, "...Can you please pay the Balance? As I have mentioned previous, we require only some payment as outstanding."

Further, a June 29, 2021 letter from the landlord to the tenant asking for payment of \$3,685.29 contains no date when this balance is due. It states, "Please find attached the invoices that are owing: May I kindly request payment as your account is over due (sic) since April. The balance on the room is \$3685.29."

These letters imply that rent could be paid on an ad-hoc basis without any great consideration as to when rent was due and suggest the landlord has acquiesced to receiving rent inconsistently.

An earlier letter from February 2017 states as follows, "Please consider this as confirmation that your account at the Hotel is cleared for 2016. There are no outstanding amounts owing." This again, implies that rent was not due on a given date.

It is evident that the landlord's conduct has allowed for rent to be paid on an ad-hoc basis in various amounts on different dates. I find their failure to clearly establish a day on which rent is due to be detrimental to their ability to enforce the 10 Day Notice. I also find that the written notice provided by the landlord to rectify any amounts due to be vague and without sufficient detail or deadlines.

For these reasons, I uphold the tenant's application to cancel the landlord's 10 Day Notice.

The tenant has also applied for a monetary award of \$31,000.00. The tenant stated that he wished to recover GST paid throughout the tenancy. The landlord said it would be impossible to return these funds as they were forwarded to the Federal Government.

Under section 7 of the *Act* a landlord who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in *Policy Guideline #16*, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a monetary award.

I find that the tenant has failed to demonstrate an entitlement to a monetary award due to insufficient evidence and detail in their application. I note, refunds were previously

given by the landlord for “overpaid” taxes in 2016-2017, while other nightly credits and “freebies” were given throughout the course of the tenancy.

The tenant did not produce a monetary order worksheet per section 2.5 of the Rules of Procedure and failed to detail how they arrived at their figure. The applicant simply asked for a return of the entire amount paid throughout the tenancy. This figure of \$31,000.00 did not take into account the above mentioned past tax repayments and nightly credits. For these reasons, I dismiss the tenant’s application for a monetary award without leave to reapply.

As the tenant was partially successful in his application, he may recover the \$100.00 filing fee.

### Conclusion

The tenant’s application to reduce rent for repairs, services or facilities agreed upon but not provided; to suspend or set conditions on the landlord’s right to enter the rental unit or site; for the landlord to provide services or facilities required by the tenancy agreement or law; and to dispute a rent increase that is above the amount allowed by law is dismissed with leave to reapply.

The 10 Day Notice issued on September 21, 2021 is cancelled and is of no force or effect.

I grant the tenant a monetary award of \$100.00. Should the landlord fail to comply with the Order, it may be filed in 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 *Residential Tenancy Act*.

Dated: February 16, 2022

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Residential Tenancy Branch