



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the landlord: OPR, MNR, MND, MNDC, OPN, OPL, FF  
For the tenant: CNL, LRE

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) served to the tenant;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- an order of possession of the rental unit based upon the tenant's written notice;
- an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued to the tenant;
- and
- to recover the cost of the filing fee.

The tenant applied for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. The parties were informed prior to the start of the hearing that recording of the dispute resolution hearing is prohibited.

The landlord confirmed that the tenant was served the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail. The Canada Post registered mail receipt was provided in evidence.

Neither party raised an issue about service of the other's applications or evidence.

Thereafter the parties were provided the opportunity to present their affirmed evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

##### *Severing unrelated issues –*

Rule 2.3 stipulates that 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.

In this circumstance the landlord indicated several matters of dispute on the application, the most urgent of which is the portion of the application dealing with the 10 Day Notice.

I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the landlord's request to enforce the 10 Day Notice and the request for a monetary order for unpaid monthly rent and the filing fee.

The landlord's request for money owed for alleged damage by the tenant and other monetary compensation is dismissed, with leave to reapply.

In addition, the landlord amended their application to seek enforcement of a 2 Month Notice and an order of possession of the rental unit based upon the tenant's written notice. I dismiss the landlord's request for an order of possession based upon these two issues, without leave to reapply, as I find the landlord's evidence was filed too late for consideration in this matter, and for reasons set out in this Decision.

The tenant's application will be addressed within this Decision.

*Excluding additional names –*

The tenant submitted that the additional listed names on her application as applicants were her mother, nephew, and child. I have excluded the additional names listed by tenant CW on the tenant's application from any consideration in these matters, as I do not find they were tenants, but rather occupants.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent, monetary compensation from the tenant from unpaid monthly rent, and to recovery of the filing fee paid for this application?

Is the tenant entitled to an order cancelling the 2 Month Notice and an order suspending or setting conditions on the landlord's right to enter the rental unit?

Background and Evidence

The landlord said there was no written tenancy agreement. The landlord submitted without dispute that the tenancy began on October 1, 2020, that monthly rent was \$2,500, and the tenant was to pay 60% of the hydro and natural gas bills. The tenant agreed to the amount of monthly rent and the requirement to pay 60% of these utilities.

The landlord proceeded first in the hearing to explain or support their Notice, as required by the Rules.

The landlord said that the tenant was served the 10 Day Notice on November 10, 2021, by personal delivery, listing unpaid rent of \$2,500 and unpaid utility charges of \$33.13 owed as of November 1, 2021. The effective vacancy date listed on the Notice was November 18, 2021. Filed into evidence was a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent and that they now owe unpaid monthly rent of \$2,500 each for November and December 2021, and January, February, and March 2022 as the tenant still occupies the rental unit. In total, the unpaid monthly rent is \$12,500. The landlord also claimed the unpaid utility charges for each of those months, which totaled \$931.11 on their monetary order worksheet.

The landlord confirmed not providing the utility bills in evidence.

*Tenant's response-*

In response, the tenant confirmed not paying the monthly rent because the landlord told her to move out. The tenant confirmed they have not moved out of the rental unit.

The tenant also could not remember receiving the 10 Day Notice. However, I note that although their application was to dispute a 2 Month Notice, the tenant filed in evidence for their application made on December 8, 2021, a copy of the 10 Day Notice.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Landlord's application –

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the Notice as their application was to dispute a 2 Month Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. In this case the end of tenancy date listed was 8 days after service. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is November 20, 2021, 10 days after the tenant received the Notice on November 10, 2021.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, or November 20, 2021.

As a result, I order the tenancy ended on November 20, 2021, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of unpaid rent of **\$12,500** due under the tenancy agreement.

I find the landlord has established a monetary claim of **\$12,500**, for the unpaid monthly rent, as noted above.

As to the landlord's monetary claim for unpaid utility charges, I **dismiss** this claim, with leave to reapply, due to the landlord's insufficient evidence of proving the amount on the bills.

I grant the landlord recovery of their filing fee of **\$100**.

I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$12,600**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

Tenant's application –

As I have granted the landlord an order of possession of the rental unit and ordered that the tenancy ended on November 20, 2021, I dismiss without leave to reapply the tenant's application for cancellation of the 2 Month Notice and an order suspending or setting conditions on the landlord's right to enter the rental unit.

### Conclusion

The landlord's application for an order of possession of the rental unit, a monetary order for unpaid rent, and recovery of the filing fee has been granted in the above terms.

The landlord's request for unpaid utility charges is dismissed with leave to reapply.

The landlord's application seeking compensation for alleged damage by the tenant and further monetary compensation is dismissed, with leave to reapply.

I dismiss without leave to reapply the landlord's request for an order of possession of the rental unit based upon a 2 Month Notice and the tenant's notice to vacate, as the tenancy has been ordered ended on November 20, 2021, due to the 10 Day Notice being upheld.

The tenant's application is dismissed without leave to reapply as I ordered the tenancy ended on November 20, 2021.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 18, 2022

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Residential Tenancy Branch