



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Code      CNR RR RP LAT LRE OLC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on November 25, 2021. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 22, 2021 (the 10 Day Notice);
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the Landlord make repairs to the unit, site, or property;
- an order authorizing the Tenant to change the locks to the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulations), and/or the tenancy agreement.

The Landlord VES was not named in the tenancy agreement submitted into evidence. Therefore, pursuant to section 64 of the Act, I amend the Tenant's application to remove the Landlord VES as a party. The individual Landlord is referred to in the singular throughout this decision.

The Landlord attended the hearing and was accompanied by JG, a witness. Also in attendance for the Landlord was SM, an agent. The Tenant attended the hearing on her own behalf. All in attendance provided a solemn affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding and supporting evidence was served on the Landlord by registered mail. The Landlord acknowledged receipt. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Landlord testified the evidence upon which they intend to rely was served on the Tenant by email on March 7, 2022. In addition, JG testified that she and her husband left the Landlord's evidence on the door of the rental unit on March 9, 2022.

The Tenant denied receipt of the Landlord's evidence because she vacated the rental unit on February 4, 2022. She testified that she made an agreement with the Landlord to vacate the rental unit by mid-February in exchange for free rent. The Tenant did not provide any documentary evidence in support of the alleged agreement, and the Landlord denied any such agreement. Rather, the Landlord testified they were unaware the Tenant may have vacated the rental unit until March 7, 2022, on which date the Landlord's father noticed that the Tenant had removed some of her belongings.

I do not accept there was an agreement to vacate the rental unit as alleged by the Tenant. There was no documentary evidence in support of an agreement, and the Landlord denied any such arrangement. However, I do accept the testimony of the Landlord who stated that he was not aware the Tenant vacated the rental unit until March 7, 2022, and that some of the Tenant's belongings remain in the rental unit. Therefore, pursuant to sections 88 and 90 of the Act, I find that the Tenant is deemed to have received the Landlord's documentary evidence on March 11, 2022, three days after it was left at the Tenant's door.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of proceedings. All in attendance confirmed they were not recording the hearing.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. No further issues were raised with respect to the evidence relied upon. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue. Therefore, during the hearing, I advised the parties that I would be exercising my discretion to dismiss all but the Tenant's request for an order cancelling the 10 Day Notice, with leave to reapply. However, considering my findings below, I amend that statement and find that the remaining issues (RR, RP, LAT, LRE, OLC) are also dismissed *without* leave to reapply.

### Issues to be Decided

1. Is the Tenant entitled to an order an order cancelling the 10 Day Notice?
2. Is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?
3. Is the Landlord entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the Act?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties agreed the tenancy began on May 1, 2021, that rent of \$2,000.00 per month is due on the first day of each month, and that the Tenant paid a security deposit of \$1,000.00, which the Landlord holds.

The Landlord testified the 10 Day Notice was served on the Tenant by registered mail on November 22, 2021. The Tenant's application acknowledges receipt on November 25, 2021.

The 10 Day Notice states that rent of \$232.00 and utilities of \$520.64 remained unpaid on the date it was issued. In addition, the Landlord testified that the Tenant did not pay rent when due on December 1, 2021, and on January 1, February 1, and March 1, 2022. The Landlord testified that rent of \$8,232.00 remains outstanding, which has been calculated as follows:

<b>Rent due date</b>	<b>Rent amount due</b>	<b>Paid</b>	<b>Outstanding</b>
November 1, 2021	\$2,000.00	\$1,768.00	\$232.00
December 1, 2021	\$2,000.00	\$0	\$2,000.00
January 1, 2022	\$2,000.00	\$0	\$2,000.00
February 1, 2022	\$2,000.00	\$0	\$2,000.00
March 1, 2022	\$2,000.00	\$0	\$2,000.00
<b>TOTAL:</b>			<b>\$8,232.00</b>

As noted above, the Landlord testified that he became aware the Tenant had vacated the rental unit on March 7, 2022. At that time, the Tenant's father noticed the front gate was open and advised the Landlord that the Tenant had moved some of her belongings from the rental unit.

In reply, the Tenant acknowledged that \$232.00 was withheld from rent due on November 1, 2021, due to the costs of maintenance and repairs done around the house. Specifically, the Tenant referred to a door guard and plaster for the walls. The Tenant also testified the house was not clean when she moved into the rental unit.

With respect to rent due on December 1, 2021, the Tenant testified that rent was initially paid by e-transfer but that it was not accepted by the Landlord. The Tenant acknowledged the e-transfer was cancelled in reliance on the agreement to vacate referred to above. As noted above, I have found there is insufficient evidence before me to conclude the parties entered into an agreement to vacate.

With respect to rent due on January 1, February 1, and March 1, 2022, the Tenant acknowledged rent was not paid when due in reliance on the alleged agreement to vacate referred to above.

In addition, the Landlord testified the Tenant has not paid utility bills totalling \$1,055.01. In support, the Landlord submitted a document summarizing utilities due and paid, and copies BC Hydro and Fortis BC utility bills. Although the Landlord submitted a number of screen prints of text message exchanges, I was not referred to any specific demand for payment of outstanding utilities.

In reply, the Tenant acknowledged an obligation to pay outstanding utilities but testified she does not agree with the amount sought.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the Act confirms a tenant must pay rent when due 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.

Section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due.

In this case, I find the 10 Day Notice was received by the Tenant on November 25, 2021, and that the Tenant disputed it on time in accordance with section 46(4) of the Act. I also find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

With respect to unpaid rent, the Tenant's testimony acknowledged that rent was not paid as alleged by the Landlord. As noted above, I find there is insufficient evidence before me to conclude the parties entered into an agreement wherein the Tenant agreed to vacate the rental unit by mid-February in exchange for free rent. I also find the Tenant has not established that she had a right under the Act to deduct all or a portion of the rent due.

Considering the above, I find that the Tenant has not paid rent when due. Therefore, I order that the Tenant's request to cancel the 10 Day Notice is dismissed without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. Therefore, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenant.

In addition, section 55(1.1) confirms that when a tenant's application to cancel a notice to end tenancy for unpaid rent or utilities is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order requiring payment of the unpaid rent.

Section 46(6) of the Act provides that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent. However, I find there is insufficient evidence before me of a written demand for payment. Therefore, I find I am unable to treat the unpaid utilities as unpaid rent for the purpose of section 55(1.1) of the Act. The Landlord remains at liberty to apply to recover unpaid utilities or other losses arising from the tenancy, in accordance with the Act.

Therefore, I grant the Landlord a monetary order for unpaid rent to March 31, 2022, in the amount of \$8,232.00.

### Conclusion

The Tenant's request for an order cancelling the 10 Day Notice is dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

By operation of section 55(1.1) of the Act, the Landlord is granted a monetary order for unpaid rent in the amount of \$8,232.00. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Pursuant to section 71(1) of the Act, I order that the order of possession and the monetary order may be served on the Tenant by email at the email address provided with the Tenant's application.

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: March 17, 2022

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Residential Tenancy Branch