



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT, OLC, MNDCT, RP, RR, LRE, PSF, ERP

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (the Application) under the *Residential Tenancy Act* (the *Act*), on December 6, 2021, and two Amendments to the Application (the Amendments) filed on December 14, 2021, and January 7, 2022, seeking:

- Cancellation of three separate 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notices);
- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- Repairs to the rental unit;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to provide services and facilities required by the tenancy agreement or law;
- An order for the Landlord to complete emergency repairs; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on February 24, 2022, and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. The Notice of Dispute Resolution Proceeding (NODRP) states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown

in the NODRP were correct and I note that the Landlord was able to attend the hearing promptly using the information contained in the NODRP. Although the Landlord stated that the Tenant never served them with a copy of the NODRP of Amendments as required, and that they only received courtesy copies from the Residential Tenancy Branch (the Branch) after contacting the Branch, the Landlord none the less attended the hearing at the scheduled time, ready to proceed.

Despite the lack of service of the NODRP and Amendments on the Landlord by the Tenant, the Landlord was able to obtain copies from the Branch, attended the hearing on time, and expressed their desire to continue with the proceeding as scheduled. The Landlord was therefore provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord attended the hearing at the scheduled time, ready to proceed, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 23 minutes, neither the Tenant nor an agent acting on their behalf appeared at the hearing to provide evidence or testimony for my consideration.

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over myself and any other participants, should they attend, and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute

resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenant nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application for the following things, without leave to reapply, as they bore the burden of proof in relation to these matters:

- An order for the Landlord to comply with the *Act*, regulations, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- Repairs to the rental unit;
- A rent reduction for repairs, services or facilities agreed upon but not provided;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to provide services and facilities required by the tenancy agreement or law;
- An order for the Landlord to complete emergency repairs; and
- Recovery of the filing fee.

Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* or a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*, as even though the Tenant filed the Application disputing the 10 Day Notices, landlords bear the burden of proof in relation to notices to end tenancy.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to sections 55(1.1) and 67 of the *Act*?

#### Background and Evidence

Neither the Tenant nor the Landlord submitted a copy of the tenancy agreement for my review and consideration. However, the Landlord stated at the hearing that a written tenancy agreement exists, that the one year fixed term tenancy commenced on November 1, 2021, that rent in the amount of \$2,500.00 is due on the first day of each

month, and that a \$1,250.00 security deposit was paid, which they still hold in trust. At the hearing the Landlord stated that when rent was not paid as required, the following notices to end tenancy were served:

- A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the First 10 Day Notice) by email and by posting to the door of the rental unit on December 2, 2021, for \$2,500.00 in rent owed as of December 1, 2021;
- A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Second 10 Day Notice posted to the door of the rental unit on December 10, 2021, for \$2,500.00 in rent owed as of December 10, 2021; and
- A 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the third 10 Day Notice posted to the door of the rental unit on January 4, 2022, for \$5,000.00 in rent owed as of January 1, 2022 (\$2,500.00 for December 2021 and \$2,500.00 for February 2022).

The First 10 Day Notice in the documentary evidence before me is signed and dated December 2, 2021, has an effective date of December 12, 2021, is on the Branch form, and states that the tenancy is being ended because the Tenant has failed to pay \$2,500.00 in rent due as of December 1, 2021.

The Second 10 Day Notice in the documentary evidence before me is signed and dated December 10, 2021, has an effective date of December 20, 2021, is on the Branch form, and states that the tenancy is being ended because the Tenant has failed to pay \$2,500.00 in rent due as of December 10, 2021. At the hearing the Landlord stated that the Second 10 Day Notice is actually just a duplicate of the first, that no additional rent was owed between the time the First 10 Day Notice was served and the Second 10 Day Notice was served, and that the Second 10 Day Notice was served because they were not sure that the Tenant had received the First 10 Day Notice as the Tenant had not acknowledged receipt or responded to it in any way.

The Third 10 Day Notice in the documentary evidence before me is also signed and dated January 4, 2022, has no affective date listed, is on the Branch form, and states that the tenancy is being ended because the Tenant has failed to pay \$5,000.00 in rent, \$2,500.00 due as of December 1, 2021, and \$2,500.00 due as of January 1, 2022.

Although no one appeared on behalf of the Tenant at the hearing to provide any evidence or testimony, in their Application and Amendments they stated that they received the notices to end tenancy as follows:

- The First 10 Day Notice was received on December 2, 2022, at the pre-arranged email;
- The Second 10 Day Notice was received on December 12, 2021, by email and from their door; and
- The Third 10 Day Notice was received on January 4, 2022, from their door.

At the hearing the Landlord stated that they have witnessed and signed proof of service documents to corroborate service, although they did not submit them for my review and consideration. The Landlord stated that no rent has been paid since the First 10 Day Notice was served, and that as of the date of the hearing, February 24, 2022, the Tenant owes \$7,500.00 in outstanding rent as follows:

- \$2,500.00 for December 2021;
- \$2,500.00 for January 2022; and
- \$2,500.00 for February 2022.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony for consideration or to point to any documentary evidence before me.

### Analysis

Based on the Landlord's affirmed and undisputed testimony, I am satisfied that a tenancy to which the *Act* applies exists between the parties and that rent in the amount of \$2,500.00 is due on the first day of each month. Based on the Landlords uncontested and affirmed testimony, I am also satisfied that the Tenant has not paid any rent for December 2021, January 2022, or February 2022.

Section 46 of the *Act* states that 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 and that a notice under this section must comply with section 52 of the *Act* with regards to form and content.

Based on the Landlord's affirmed testimony and the statements made by the Tenant in the Application and Amendments, I am satisfied that the Tenant received the three notices to end tenancy and disputed them within the 5 day time period set out under section 46(4) of the *Act* and therefore the conclusive presumption provisions set out under section 46(5) of the *Act* do not apply. Having made that finding, I will now turn my mind to whether the Tenant owed rent at the time the First 10 Day Notice was served,

and if so, whether the outstanding rent was paid within 5 days after service of the First 10 Day Notice on the Tenant. Based on the uncontested and affirmed testimony of the Landlord, I am satisfied that the Tenant has not paid any rent to the Landlord between the date the First 10 Day Notice was served, December 2, 2021, and the date of the hearing, February 24, 2022. As there is no evidence or testimony before me from the Tenant that they had a right under the *Act* to deduct or withhold the rent, and the Landlord denied that they did, I am therefore satisfied that the Tenant owed the amount shown on the First 10 Day Notice and that they did not pay this overdue rent amount at all, let alone within 5 days after receiving the First 10 Day Notice.

Based on the above, and as I am satisfied that the First 10 Day Notice complies with the form and content requirements set out under section 52 of the *Act*, I therefore find that the Landlord had grounds to end the tenancy under section 46 of the *Act*. Given this finding, I do not find it necessary to make any further findings of fact or law in relation to the Second or Third 10 Day Notice.

Pursuant to section 68(2) of the *Act* and Residential Tenancy Branch Policy Guideline (Policy Guideline) #3, I therefore find that the tenancy ended on February 24, 2022, the date of the hearing, as the result of the First 10 Day Notice. Pursuant to section 55(1) of the *Act*, I therefore grant the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant. Pursuant to sections 55(1.1) and 67 of the *Act* and Policy Guideline #3, I also grant the Landlord a Monetary Order for outstanding rent owed up to and including February 24, 2022, in the amount of \$7,142.85; \$2,500.00 in outstanding rent for December 2021; \$2,500.00 in outstanding rent for January 2022, and \$2,142.85 in per diem rent for February 1, 2022 -February 24, 2022, ( $\$2,500.00/28 \times 24$ ) the date I have ordered that the tenancy ended.

The Landlord remains entitled to file an Application for Dispute Resolution against the Tenant seeking compensation for overholding the rental unit after February 24, 2022, pursuant to section 57(3) of the *Act*, in addition to any lost rent suffered after that period, if applicable, should they wish to do so.

At the Landlord's request and pursuant to section 72(2)(b) of the *Act*, I permit the Landlord to retain the \$1,250.00 security deposit towards the above owed amount. Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$5,892.85, and I order the Tenant to pay this amount to the Landlord.

Conclusion

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **Two Days after service of this Order** on the Tenant. The Landlord is provided with this Order 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$5,892.85**. The Landlord is provided with this Order 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: March 10, 2022

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Residential Tenancy Branch