



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Robson Towers  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      For the tenant: CNR, RR, RP, FF  
For the landlord: OPR, MNR, FF

### **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 tenant applied on January 11, 2022, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (**Notice**) issued by the landlord;
- a reduction in monthly rent;
- an order requiring the landlord to make repairs to the rental unit; and
- to recover the cost of the filing fee.

The landlord applied on January 18, 2022, for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The tenant and the landlord's agent/building manager (landlord) attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Both parties were cautioned against recording of the hearing and both parties affirmed they were not recording the hearing.

The parties confirmed receipt of the other's evidence. No issue was raised concerning the other's respective applications.

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 Matter- Severing

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 10 Day Notice. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with or without leave to re-apply, depending on the outcome of the hearing.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and to recover the cost of the filing fee?

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

### Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy starting October 1, 2012, beginning monthly rent of \$950, due on the 1<sup>st</sup> day of the month, and a security deposit of \$475 being paid by the tenant to the landlord.

The landlord submitted a copy of the Notice of Rent Increase, which showed the monthly rent increased from \$1,076, which went into effect on May 1, 2019, to \$1,092, which went into effect January 1, 2022.

The parties were informed the landlord would proceed first in the hearing to explain or support their Notice, as required by the Rules.

The landlord confirmed that on January 7, 2022, the tenant was served the Notice, by registered mail, listing unpaid rent of \$1,092 owed as of January 1, 2022. The effective vacancy date listed on the Notice was January 17, 2022. Filed into evidence was a copy of the Notice. The tenant's application confirmed receipt of the Notice on January 11, 2022.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent and that the tenant now owes unpaid rent of \$1,092 each for January, February, March, and April, 2021, through the date of the hearing, in the amount of \$4,368.

*Tenant's response-*

In response, the tenant confirmed that he has not paid the rent listed on the Notice, although he attempted to pay the landlord half the rent, but the landlord refused to accept the payments.

The tenant said that he did not pay the full amounts, or attempted to pay the full amount, until the landlord addressed the heating issue.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

*Landlord's application-*

**Order of possession of the rental unit –**

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 comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that he had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice. In this case, the tenant confirmed receiving the Notice on January 11, 2022, and I find the effective date is now corrected to January 21, 2022.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed, and did not pay the outstanding rent within five days of service. I also find the tenant submitted insufficient evidence that he had a legal right to withhold the monthly rent. I therefore find the landlord submitted sufficient evidence to support the Notice. As a result, I find the tenancy has ended for the tenant's failure to pay rent owed and the landlord is entitled to gain possession of the rental unit.

I therefore **dismiss** the tenant's application seeking cancellation of the Notice as well as the request to recover the filing fee. The tenant ought to have filed an application for dispute resolution seeking authority to reduce his monthly rent or have the repair requests dealt with, as the tenant said the issues began three years ago.

I order the tenancy ended on January 21, 2022, the corrected effective date of the Notice.

As such, I find that the landlord is entitled to and I therefore **grant** them an order of possession for the rental unit (**Order**) effective **2 days after service upon the tenant**, pursuant to section 55(1)(b) of the Act. The Order is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the Order after it has been served upon him, this Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

**Monetary order – landlord's application**

I find that the landlord submitted sufficient and undisputed evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, or any month since.

I find it reasonable in the circumstance to amend the landlord's monetary claim to include the unpaid monthly rent through the date of the hearing.

I therefore find the landlord has established a monetary claim of **\$4,368**, comprised of unpaid rent of \$1,092 for the months of January, February, March and April 2022, each. I also grant the landlord recovery of their filing fee of **\$100** filing fee paid by the landlord for this application.

As a result, I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of **\$4,468**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the 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 recoverable from the tenant.

### Conclusion

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

The tenant's application is dismissed without leave to reapply as I have granted the landlord's application in full.

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: April 11, 2022