



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

RP, CNR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlords make repairs to the rental unit pursuant to section 32;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by their agents, RH (Property Manager) and LK (Property Assistant). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlord's agent testified that the landlord submitted no evidence in response to the tenant's application. I find that all parties have been served with the required documents in accordance with the Act.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary Issue #1: Tenant's Application for Repairs

The tenant applied for various and wide-ranging relief. Pursuant to rule 2.3 of the Rules, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy

Branch are generally scheduled for one-hour and rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

Upon review of the tenant's application, I find that the primary issue is whether the tenancy will continue or end pursuant to the 10 Day Notice to end tenancy that is subject to the application.

Accordingly, pursuant to rule 2. 3 of the Rules, I dismiss the tenant's following claim with leave to reapply:

- an order for repairs pursuant to s. 32

The hearing proceeded on the issue tied to the notice to end tenancy signed January 11, 2022.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If the tenant fails in his application, is the landlord entitled to:

- 1) an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered a written fixed term tenancy agreement starting December 1, 2021 ending November 30, 2022, and continuing month to month thereafter. Monthly rent is \$2150.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1075.00. The landlord still retains this deposit.

The landlord's agents explained to the tenant that they were having problems with the payment system. On January 26, 2022, the Senior Property Manager advised the tenant that the 10 Day Notice issued January 11, 2022, was revoked and the tenant's rent payment 'found'. Over the course of four (4) months, the landlord issued the tenant one (1) 10 Day Notice for unpaid rent dated January 11, 2022 with an effective date of January 21, 2022 and a "demand letter" on November 4, 2021 when the tenant's October 1, 2021, rent payment wasn't deposited until November 2, 2021 because of technical problems with the property management company's online payment system. The tenant disputed the 10-Day Notice issued January 11, 2022; therefore, the only matter before me is the 10-Day Notice of January 11, 2022.

The tenant states that he is a 75-year-old widower who sold the condo shared with his wife, "invested the proceeds with the plan of living a secure and uneventful life in an upscale apartment". Pre-COVID he travelled extensively but now is concerned if he takes a vacation, he may be issued another notice for unpaid rent in his absence and will not be able to file an application for dispute resolution within the time frames. He is now "nervous to head out to visit friends or family for I may find my stuff on the boulevard when I return". He requested compensation for damages from the landlord for "the stress, worry, and now fear of leaving home" resulting from the "misplaced/mishandled" rent deposits and asked the landlord for:

1. A written letter of apology, signed by Mr. [CT] , on [XX] letterhead acknowledging you acted in error in issuing the 10-day notice to end tenancy
2. Reimbursement of \$100.00 filing fee for notice of dispute resolution
3. Estimated 20 hours of my time at the Living Wage for Parksville rate of \$16.76 per hour for a total of \$335.20 for filing requests for dispute resolution and dealing with other correspondence.
4. Reimbursement for photocopies required to serve [XX] Notice - \$4.97.
5. Reimbursement for cost of registering the letter the notice of dispute resolution proceeding through Canada Post - \$12.27

Total amount claimed- **\$452.44.**

In return the tenant would withdraw the application. However, the landlord's agent refused to reimburse his costs and so the tenant refused to withdraw his application for dispute resolution.

The landlord's agents, RP and LK, provided the following information. Both acknowledge that the tenant, in both cases where notice was issued, had paid his rent on time. The source of the problem is the Corporate payment system. Agent RP stated that as soon as they located the payment and realized the Notice of January 11, 2022, was issued in error, they revoked the Notice. Agent LK pointed out that that computer systems do not always work as intended. Rent is flagged as unpaid and a notice is issued.

The landlord's agent, LK stated that they were instructed to not pay damages to the tenant because the "issue did not need to go this far". She testified that the Notice was revoked a couple days after it was issued. She was unable to provide an exact date.

The tenant states that the Notice was revoked two (2) days after the eviction effective date and referred to an email from the Senior Property Manager.

### **Analysis**

Over the course of four (4) months, the landlord issued the tenant one (1) 10 Day Notice for unpaid rent on January 11, 2022, and a "demand letter" threatening legal action on November 4,

2021, when his October 1, 2021, rent payment wasn't deposited until November 2 because of a systems problem.

As per s. 26, the tenant fulfilled his obligation and paid his rent through the Corporate portal as required by the landlord's property management company. The landlord's agents point as justification for issuing the 10-Day Notice that the corporate payment system malfunctioned and did not accurately record payments made. They have no ability to determine if rent was or was not paid, thus the 10-Day Notice was issued. The landlord's agents confirm that the issue is with the Corporate system and no fault of the tenant.

A tenancy agreement is a legally binding contract between the landlord and the tenant. Both the landlord and the tenant have rights and obligations. The Act s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenant has the right to exclusive, or sole possession and [quiet enjoyment](#) – reasonable privacy and freedom from unreasonable disturbance or significant interference with their use of the rental property.

The tenant discharged his obligation under s. 26 of the Act when he paid his rent in accordance with the terms of the tenancy agreement through the Corporate portal as required by the property management company.

Section 28 of the *Act* sets out a tenant's right to quiet enjoyment. This section states as follows:

- 28.** A tenant is entitled to quiet enjoyment including but not limited to, rights to the following:
- (a) reasonable privacy
  - (b) freedom from unreasonable disturbance.
  - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 39 [landlord's right to enter rental unit unrestricted]

The tenant did not apply for a monetary order; therefore, the issue of compensation is not before me. If the tenant feels he is entitled to compensation, he is at liberty to file an application for dispute resolution.

The landlord's agent argued had the tenant not filed for dispute resolution he would not have incurred the \$100.00 filing fee. The landlord's agent argued the matter "did not need to go this far" and the tenant could have withdrawn his application. I disagree.

The 10 Day Notice cites specific timeline requirements. It reads:

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400-5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice. [emphasis added]

Had the tenant not filed for dispute resolution, he would have been conclusively presumed to have accepted the end to the tenancy.

Further, there is a protocol required when a landlord either amends or withdraws a Notice to End Tenancy. Residential Tenancy Branch Policy Guideline 11, "Amendment and Withdrawal of a Notice to End Tenancy" reads in part:

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### **C. Withdrawal of Notice to End Tenancy**

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

### **D. Waiver of Notice and new or Continued Tenancy**

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived, and the tenancy will continue.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behavior of the landlord or tenant.

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The effective date of the 10 Day Notice was January 21, 2022. I accept as fact the tenant's testimony that the landlord did not offer to withdraw the Notice until two (2) days after the effective date as shown by email. The landlord's offer to withdraw the notice was 1) made after the effective date and 2) while the waiver can be express or implied, the preferred process is to put the withdrawal in writing, signed by both parties. A waiver signed in contravention of policy would be of no force or effect.

Additionally, there is a process to follow when withdrawing an application for dispute resolution.

### **5.0.1 Withdrawal of an Application for Dispute Resolution**

#### **How to withdraw an application for dispute resolution.**

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#### **Withdrawing an application to dispute a note to end tenancy.**

Where a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application.

Required documents:

- the respondent landlord's written consent to withdraw

The tenant needs the landlord's written consent to withdraw.

I found the landlord's agents response to the tenant's situation dismissive and disappointing. The property management company, fully aware of the computer glitches, appears to have adopted a reactive vs investigative approach, issuing various notices without fully appreciating the significant impact eviction notices or notices threatening legal action have on tenants.

Also, when I reviewed the tenancy agreement submitted into evidence by the tenant, I note that his social security number was required on the tenancy agreement. Requiring a social security number is not part of the standard terms of the tenancy agreement and should not be collected. I have attached is a link to the RTB-1 [https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1\\_chrome.pdf](https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1_chrome.pdf)

Taking into careful consideration all the oral testimony and documentary evidence presented and applying the law to the facts, I cancel the 10 Day Notice. Rent was paid on time, the Notice issued inappropriately. The tenancy shall continue until ended in accordance with the Act.

The tenant was successful in his application. I authorize the tenant to reduce his next monthly rent payment in the amount of \$100.00 on a one time only basis in full satisfaction of the filing fee.

**Conclusion**

The 10 Day Notice is cancelled. The tenant's application is granted. The tenancy continues until ended in accordance with the Act.

Pursuant to section 72(1) of the Act, as the tenant was successful in his application, he may recover the filing fee of \$100.00 from the landlord.

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: April 16, 2022

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Residential Tenancy Branch