



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, FFL, CNR, RR, FFT, RP

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to an order to have the landlord make repairs to the unit/suite?

Is either party entitled to the recovery of the filing fee for their application?

#### Background and Evidence

The landlords' agents gave the following testimony. JP testified that the tenancy began on April 1, 2020 with the monthly rent of \$5700.00 due on the first of each month. The tenant paid a security deposit of \$2850.00 which the landlord still holds in trust. JP testified that as a result of a previous hearing before another Arbitrator, the tenant was given a rent reduction for several items. JP testified that the tenant was entitled to \$730.00 in a rent reduction up until those items were remediated.

JP testified that a wine cooler replacement was done in July 2021 which would cancel \$500.00 of the rent reduction. DP testified that the tenant refused to cooperate in allowing the landlord to clean several of the blinds thereby cancelling \$100.00 of the rent reduction, also in July 2021. JP agrees that the tenant is still entitled to a \$130.00 rent reduction from the original amount of \$5700.00, however the tenant has only been paying \$4970.00 since August 2021. JP testified that the tenant has arbitrarily withheld \$600.00 per month for the past nine months. JP testified that a 10 Day Notice to End Tenancy was posted on the tenants' door on February 8, 2022. JP testified that as of

today's hearing, the amount of unpaid rent is \$5400.00. DP requests a monetary order in that amount, the recovery of the filing fee and an order of possession.

The tenant gave the following testimony. The tenant testified that the landlord has not complied with the previous decision in providing a comparable wine cooler and to professionally clean the blinds as ordered. The tenant testified that the wine cooler was "not panel ready" and there was a gap of a half an inch around it. The tenant testified that he is paying a premium rental rate and wanted to have the exact same wine cooler as the previous model. The tenant testified that the landlord asked him to move furniture out of the way to allow the blinds cleaning company to conduct their work.

The tenant testified that he was not in a position to move the furniture such as a nine foot sectional, a six foot desk and his daughters bed. The tenant testified that the landlord should have arranged for movers to move his items so that the blinds could be cleaned. The tenant testified that the landlord has not complied with the previous decision and therefore his rent reduction was still in effect and that all rent has been paid in accordance with that decision.

### Analysis

Section 26 of the Act reads as follows:

#### **Rules about payment and non-payment of rent**

**26** (1)A tenant must pay rent when it is due under the tenancy agreement, 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.

The tenant submits that he has a right under the above section of the Act pursuant to a Decision from Arbitrator McKay dated May 28, 2021. The pertinent and relevant portion of that decision about the wine cooler was addressed by Arbitrator McKay as follows:

*"I therefore grant the Tenant's request for monetary compensation for loss of use of the wine cooler. Arbitrator Senay dismissed his claim up to and including December 15, 2020. I therefore find he is entitled to compensation from that date to the date the cooler is replaced with a comparable unit, which is guaranteed to be safely installed in the cabinet. I award the Tenant \$100.00 per month for January, February, March, April and May 2021. The Tenant is entitled to \$50.00 per month for December 2020. Should the*

*Landlord not replace the wine cooler as of June 15, 2021, the Tenant may increase his rent reduction to \$500.00 per month until the cooler is replaced. I find that such compensation will incentivize the Landlord to address this matter in a timely fashion.”*

The decision does not state that the cooler must be an “exact” replacement. I find that the cooler provided by the landlord is of comparable quality. Based on the above, I find that the landlord complied with Arbitrator McKay’s order and therefore the \$500.00 rent reduction was no longer in effect from August 2021.

As for the blinds, Arbitrator McKay made the following order:

*“I also order that the Landlord attend to cleaning of the blinds. I agree with the Tenant that to have only one set cleaned will cause them to be mismatched. I also agree that had the Landlord attended to this request in a timely fashion cleaning would not be required. I therefore Order the Landlord to have the blinds cleaned by June 15, 2021. Should the Landlord not comply, the Tenant may further reduce his rent by \$100.00 per month until the month after the Landlord complies.”*

The landlord provided a receipt that shows all but four blinds were cleaned. DP testified that the tenant refused to move his personal items and due to the difficult nature of this tenancy he did not want to be responsible for touching his personal belongings. I am satisfied that the landlord complied with order made by Arbitrator McKay and that the four uncleaned blinds are a result of the tenants’ inaction and unwillingness to accommodate for the cleaning. I find that the \$100.00 rent reduction was no longer in effect from August 2021.

Section 55(1) of the Act reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

**I order the tenant's application dismissed without liberty to reapply.** I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, February 21, 2022. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Section 55(1.1) of the *Act* states the following:

*55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply. The landlord's 10 Day Notice complies with section 52 of the *Act* and I have upheld that notice.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlords provided evidence that the tenant failed to pay the rent in full for the months of August 2021 to April 2022, inclusive. Therefore, I find that the landlords are entitled to \$5400.00 (\$600.00 shortfall X 9 months= \$5400.00) in arrears for the above period.

The landlords continue to hold the tenant's security deposit in the amount of \$2,850.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

As I have determined that this tenancy is over, I need not consider the tenants request for repairs, accordingly; the tenants' entire application is dismissed in its entirety without leave to reapply.

### Conclusion

The landlord has established a claim for \$5,500.00. I order that the landlord retain the \$2850.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$2,650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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 07, 2022

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Residential Tenancy Branch