



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, OLC

### Introduction

The tenant seeks the following relief:

Claim 1: to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") under section 46 of the *Residential Tenancy Act* ("Act"),

Claim 2: to recover the cost of emergency repairs, pursuant to section 33(7) of the Act,

Claim 3: compensation for "time spent on responding to the vexatious Notice" pursuant to section 67 of the Act, and

Claim 4: an order requiring the landlords to comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act.

Attending the hearing was the landlords' agent and the tenant. The parties were affirmed, no significant service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

### Preliminary Issue: Dismissal of Claims 2 and 3

In respect of claim #2, the tenant provided no documentary evidence, such as receipts, invoices, work orders, or anything to substantiate his claims for what amount to compensation. While the tenant did provide a cost breakdown document, this is simply a list of approximate or rounded out dollar amounts. For example, the amounts are variously listed as \$1,500, \$1,000, and \$500. \$2,200 is referenced as the cost for floor tiling. Not only are the amounts rather arbitrary, but they do also not correspond to any actual receipts or invoices. Based on the lack of supporting documentary evidence, I am not persuaded on a balance of probabilities that the tenant has proven a claim for

compensation in the amount of \$7,700.00. This aspect of the tenant's application is dismissed without leave to reapply.

In respect of claim #3, the tenant seeks \$500 for "time spent on responding to vexatious Notice to End Tenancy." As with the previous monetary claim, the tenant has not provided any sort of log or record of hours spent, nor is there any explanation as to what per hour rate is being sought. Based on the evidence before me, the landlord's issuing of the Notice is based on an unpaid debt, and there is no evidence before me that the landlords issued the Notice as an abuse of process thereby giving rise to what is known as vexatious litigation. As with the first monetary claim, this aspect of the tenant's application is dismissed without leave to reapply.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order of compliance?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began in 2018. Monthly rent is \$2,000.00 and the tenant paid a \$1,050.00 security deposit. A copy of the tenancy agreement is in evidence.

During the early phase of the COVID pandemic, the tenant stopped paying rent and negotiated a rent repayment plan with the landlords. According to the landlords, the tenant has not repaid the arrears for which the repayment plan covers, in the amount of \$7,560.00. After no repayment was forthcoming the landlords issued the Notice.

A copy of the Notice was in evidence, and the parties did not dispute that the Notice was served on the tenant by email. The tenant acknowledged receiving the Notice and they filed the dispute application within the five-day period. In response to a question from me, the landlords' agent confirmed that the \$7,560.00 on the Notice was not for any unpaid rent for March 1, 2022. In other words, the tenant paid rent on time for March 2022, and for previous months for that matter.

The tenant testified that they incurred many costs and expenditures for various things during the tenancy, including repairs and upgrades to various aspects of the rental unit and upgraded appliances. It was his position that, as the landlords did not (either chose not to or otherwise refused to) reimburse the tenant for any of these expenditures (which roughly equal the rent arrears) that the tenant's costs ought to be offset by the arrears. That is, the arrears would cancel the costs made, thereby erasing the debt.

The landlords' agent testified that he never received a single invoice or receipt from the tenant for any of the repairs or upgrades. In response, the tenant said that they never sent any invoices because the landlords never responded to his emails about paying him for the repairs and upgrades.

### Analysis

A 10 Day Notice to End Tenancy for Unpaid Rent is given when rent is not paid on the day that it is due under the tenancy agreement. In this dispute, while the Notice indicates that rent in the amount of \$7,560 was due March 1, 2022, this is not entirely true. Indeed, the tenant *did* pay the rent of \$2,000 that was due on the first. Thus, while the tenant may owe the landlords \$7,560 in rent arrears, the landlords' issuing of the Notice was not the correct method of attempting to collect on this unpaid amount.

Given the above, it is my finding that the reason for the Notice being issued has not been satisfied (under [section 46](#) of the Act). Accordingly, the Notice is hereby cancelled. It is of no force or legal effect and the tenancy shall continue until it is ended in accordance with the Act.

That said, the landlords remain at liberty to file an application seeking a monetary order against the tenant for unpaid arrears. Quite frankly, I found much of the tenant's testimony to lack an air of reality: that the amount he purportedly spent on repairs and upgrades approximately equals the amount of arrears owing raises, in my mind, a serious red flag as to the veracity of his claim.

Regarding the tenant's application for an order under section 62 of the Act, again, there is no evidence before me to find that the landlords refused to compensate the tenant for repairs purportedly performed. Most of the matters claimed (such as appliance upgrades) do not fall under the [section 33](#) definition of "emergency repairs." And for those items (such as a water leak), I see no evidence that the tenant complied with the specific requirements set out in section 33 of the Act.

For example, the tenant has not provided any receipts to the landlords as required by section 33(5)(b). For these reasons, this aspect of the tenant's application is dismissed without leave to reapply.

### Conclusion

The application to cancel the Notice is granted. Effective immediately, the 10 Day Notice to End Tenancy for Unpaid Rent is hereby cancelled, and the Notice is of no force or legal effect. The tenancy will continue until ended in accordance with the Act.

The remainder of the application is dismissed without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: April 29, 2022

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Residential Tenancy Branch