



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT, MNRT, LRE, RR, RP, OLC, LAT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), the Tenants applied for the following claims:

1. an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice");
2. to suspend or restrict the Landlord's right to enter;
3. a monetary order of \$891.19 for damage or compensation under the Act;
4. an Order to reduce the rent by \$2,235.48 for repairs, services or facilities agreed upon but not provided;
5. an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
6. an Order for the Landlord to Comply with the Act or tenancy agreement;
7. for authorization for the Tenant to change the lock; and
8. to recover the \$100.00 cost of their Application filing fee.

Residential Tenancy Branch ("RTB") Rule of Procedure ("Rules") 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated a variety of different disputes on their Application, the most urgent of which is the claim to set aside the 10 Day Notice. In the hearing, I advised the Parties of my finding that not all the claims on the Application are sufficiently related to be determined during this proceeding. I told them that I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice, and the recovery of the Application filing fee at this proceeding. Therefore, the Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

The Tenant, C.I., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord

were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. In most circumstances this is the person who applies for dispute resolution. However, in some situations, the onus of proof is on the other party. For example, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord for the Tenants' claim before me.

### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the fixed-term tenancy began on December 8, 2021, and is scheduled to run to June 15, 2022, and then to operate on a month-to-month basis. They agreed that the tenancy agreement requires the Tenants to pay the Landlord a monthly rent of \$1,925.00, due on the 15<sup>th</sup> day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$962.00, and a pet damage deposit of \$500.00. The Landlord confirmed that she still holds these deposits in full.

The 10 Day Notice was signed and dated January 17, 2022, it has the rental unit address, it was served in person on January 17, 2022, with an effective vacancy date of February 28, 2022, which is automatically corrected to January 27, 2022, by the Act. The Parties agreed that the 10 Day Notice was served on the grounds that the Tenants failed to pay the Landlord \$631.00 in rent when it was due on January 15, 2022.

In the hearing, the Landlord said that the Tenants have been withholding rent for reasons such as “emergency repairs”, which the Landlord said were remedied prior to the Tenants withholding the rent.

The Landlord said the Tenants also withheld rent because they thought the rental unit was not clean enough at the start of the tenancy. The Landlord said in the hearing:

The previous tenant left the unit in good condition, and their security deposit was returned in full. As a good faith gesture, I hired a cleaner [for the new Tenants] for the painting and sanding we did. The Tenants didn't answer the door, so the cleaning lady I hired was not able to do the cleaning. It was explained that you can't withhold rent.

The Tenant replied, as follows:

She says that she hired a cleaner a few weeks in, but we got occupancy on December 8<sup>th</sup>, but nothing had been done. She gave us one key and it was the only copy, and she said she was going lock the door and left. I had also booked a cleaner to come in to clean. I said sure, maybe tomorrow, thank you. She came back and said okay. She was available at 12:15. The cleaner was supposed to come the next day, but she didn't show up. We had to take over the cleaning. No cleaner came. I was in my truck out front. The cleaner claimed she rang the doorbell, but we didn't answer. I was sitting out front the entire time.

I asked the Landlord how much rent the Tenants had paid and how much they had withheld. The following table details what the Landlord told me.

<b>Date Rent Due</b>	<b>Amount Owing</b>	<b>Amount Received</b>	<b>Amount Owing</b>
Dec 8 – 15/21	\$248.00	\$0.00	\$248.00
Dec 15/21	\$1,925.00	\$1,925.00	\$0.00
Jan 15/22	\$1,925.00	\$1257.26	\$667.74
Feb. 15/22	\$1,925.00	\$1,925.00	\$0.00
March 15/22	\$1,925.00	\$1,925.00	\$0.00
			<b>\$915.74</b>

The Tenant explained that they deducted from the rent paid, because they had done 12 hours of painting. The Tenant also said that the \$248.00 the Landlord is claiming for December 2021 was supposed to be applied to the cleaning the Tenants did. The Tenant said:

December 11<sup>th</sup> to the 14<sup>th</sup> is still outstanding, but in question – ultimately, she owes a lot more. We were in there from the 11<sup>th</sup> to the 15<sup>th</sup>, but we didn't withhold the rent; she said don't worry about it now, until everything's sorted out.

The Landlord replied:

What was stated was not correct. They asked to move in earlier. I said I'd try as much as possible, but no 'for sure' plans. because the previous tenants were not out, and I didn't know when they were going. There were no guarantees other than from the 15<sup>th</sup> on. I tried to make things work re moving in early, but I said they would still owe an amount. It was not covered under the tenancy agreement, so the \$248.00 - we agreed on that amount. I let her know that I hired someone to paint.

The Tenant then listed a number of things she said they did for the residential property, including cleaning, replacing a missing window, removing electrical covers for painting, replaced the patio locks on the back door that were broken. However, the Tenant did not direct me to any evidence she submitted, which indicates that the Landlord agreed

that the Tenant should do these things, nor that the Landlord agreed to compensate them for this work.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me, and pursuant to sections 88 and 90 of the Act, I find that the Tenants were properly served with the 10 Day Notice in person on January 17, 2022. I find that the 10 Day Notice is compliant with section 52, as to form and content.

Section 26 of the Act states that a tenant must 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. In the hearing, the Landlord said that she was owed \$915.74 in unpaid rent as of March 15, 2022. I find that the Tenant did not dispute that they have withheld this much rent from the Landlord.

Based on the above, I find that the \$631.00 of rental arrears listed on the 10 Day Notice is incorrect, as it was based on outstanding rent amount for January, when the 10 Day Notice was served. Rather, the Parties agreed that as of the date of the hearing, the Tenants have failed to pay the Landlord \$915.74 in rent. The Landlord requested that the monetary order for unpaid rent for which she is eligible - based on the Tenant's Application and pursuant to section 55 (1.1) - should be increased from \$613.00 to \$915.74. She said this change reflects the increasing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c ) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought by the Landlord from the Tenants from \$613.00 to \$915.74. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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.

Based on the agreed upon rental arrears outstanding, I uphold the Landlord's 10 Day Notice to end the tenancy, and I dismiss the Tenants' Application to cancel the 10 Day Notice. Therefore, and **pursuant to section 55 of the Act**, I award the Landlord with an **Order of Possession** of the rental unit. Given that the effective date of the 10 Day Notice has passed, the Order of Possession will be **effective two days after service on the Tenants**.

Further, I award the Landlord with recovery of **\$914.74** of unpaid rent from the Tenants, pursuant to sections 26, 55 (1.1), and 67 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$962.00** security deposit and **\$500.00** pet damage deposit in complete satisfaction of the Landlord's monetary award. I authorize the Landlord to retain **\$914.74** of the Tenants' security deposit and return the remaining \$47.26 to the Tenant, as well as returning their \$500.00 pet damage deposit, as soon as possible. The **Tenants** are provided with a **Monetary Order** for **\$547.26** in this regard.

### Conclusion

The Tenants are unsuccessful in their Application to cancel the 10 Day Notice, as they agreed that they failed to pay rent in full in the first two months of the tenancy, without authority to do so. The 10 Day Notice is confirmed as valid and enforceable. Accordingly, the Tenants' Application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenants' other claims that are related to an ongoing tenancy are dismissed without leave to reapply. The Tenants' monetary claims that are not related to an ongoing tenancy are dismissed with leave to reapply

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession effective two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this

Order as soon as possible.

Should the Tenants fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also awarded recovery of unpaid rent owed her by the Tenants in the amount of **\$914.74**. The Landlord is authorized to retain \$914.74 of the Tenants' \$962.00 security deposit in complete satisfaction of this award. The Landlord is Ordered to return the remaining \$47.26, as well as the Tenants' \$500.00 pet damage deposit as soon as possible.

As a result, the **Tenants are granted a Monetary Order from the Landlord of \$547.26** for the remainder of their security and pet damage deposits.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 09, 2022

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Residential Tenancy Branch