



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR  
CNR, MNDCT, MNRT, RR, AAT, LRE, RP, RPP, OLC, LAT, PSF  
CNR  
CNL-4M, PSF, AAT  
CNC, OLC, PSF

## Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant.

The landlord applied for an Order of Possession for unpaid rent or utilities by way of the Direct Request Process, which was referred to this participatory hearing, joined to be heard with the tenants applications.

The tenant has made 4 applications. The first seeks the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act* or the tenancy agreement;
- a monetary order for the cost of emergency repairs;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord allow access to the rental unit for the tenant and the tenant's guests;
- an order that the landlord return the tenant's personal property;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order permitting the tenant to change the locks to the rental unit; and
- for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

The tenant's second application seeks an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The tenant's third application seeks:

- an order cancelling a Four Months' Notice to End Tenancy For Demolition, Renovation, or Conversion to Another Use;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- an order that the landlord allow access to the rental unit for the tenant or the tenant's guests.

The tenant's fourth application seeks:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord comply with the *Act* or the tenancy agreement; and
- for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

All of the tenant's applications have been joined to be heard together with the landlord's application.

The landlord and the tenant attended the hearing on June 23, 2022 however the hearing did not conclude and I adjourned the hearing to continue on July 6, 2022, and my Interim Decision was provided to the parties. The landlord and the tenant both attended on July 6, 2022.

At the commencement of the hearing, I advised the parties that the Rules of Procedure require that multiple applications contained in a single application must be related, and the hearing focused on the notices to end the tenancy.

The landlord and the tenant each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The landlord submitted that all evidence has been provided to the tenant, which was not disputed by the tenant. However, the landlord also submitted that only some of the tenant's evidence has been provided to the landlord, and some pages are blank. The landlord did not oppose inclusion of the tenant's evidence, and without hearing what has been received, I accept the tenant's evidence. Only the evidence related to the notices to end the tenancy is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 6, 2022 was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 6, 2022 was given in accordance with the *Act*?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Act*, specifically with respect to the reasons for issuing it?
- Has the landlord established that the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use dated February 25, 2022 was given in accordance with the *Act*?

Background and Evidence

**The landlord** testified that this month-to-month tenancy began on June 1, 2021 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$1,500.00 is payable on the 1<sup>st</sup> day of each month. No security deposit or pet damage deposit was collected by the landlord. The rental unit is a suite over the landlord's workshop.

The landlord further testified that on April 6, 2022 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of pages 1 and 2 of the 3-page document has been provided by the tenant for this hearing. The reason for issuing it states that the tenant failed to pay rent in the amount of \$1,500.00 that was due on April 1, 2022.

On April 6, 2022 the landlord caused the tenant to be served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy of the 3-page form has been provided by the landlord for this hearing. It is dated April 6, 2022 and contains an effective date of vacancy of April 16, 2022 for unpaid rent in the amount of \$1,500.00 that was due on March 1, 2022. The landlord gave the Notice to another person to serve, who posted it to the door of the rental unit, and a video of such service has also been provided for this hearing.

The landlord also caused the tenant to be served in the same manner with a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use, and a copy has been provided by the landlord for this hearing. It is dated February 25, 2022 and contains an effective date of vacancy of June 30, 2022. The reason for issuing it states: I am ending your tenancy because I am going to convert the rental unit to a non-residential use.

The tenant has also provided a copy of a One Month Notice to End Tenancy for Cause and a copy has been provided for this hearing by the tenant. It is not dated, but signed by the landlord, and contains an effective date of vacancy of May 6, 2022. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Rental unit must be vacated to comply with a government order.

The landlord does not recall that Notice, however has provided a copy of another One Month Notice to End Tenancy for Cause and testified that it was served on February 25, 2022 by posting it to the door of the rental unit. It is dated February 25, 2022 and contains an effective date of vacancy of April 1, 2022. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Rental unit must be vacated to comply with a government order.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$3,000.00 for March and June, 2022.

With respect to repeated late rent, the landlord testified that the tenant paid \$1,400.00 for rent for June, 2021 on May 29, 2021, so it was not late except for \$100.00. On June 25, 2021 the tenant paid \$1,400.00 for July, again short by \$100.00. On August 4, 2021 the tenant paid \$1,400.00 and an additional \$100.00 on August 8, 2021. In September, 2021 the tenant paid \$750.00 for September and an additional \$750.00 on September 3, 2021. Rent for October and November, 2021 were paid on time, but rent for December, 2021 was paid on the 10<sup>th</sup> of the month. Rent for January, 2022 was paid on January 7, 2022. On April 10, 2022 the tenant paid rent for April, but didn't pay rent for March. On March 6, 2022 the tenant sent an email transfer to the landlord but cancelled it. On March 8, 2022 the landlord told the tenant that it had been cancelled and asked if the tenant had decided to stop paying rent. The tenant said it was sent on the 4<sup>th</sup> of the month, then made allegations to police that the tenant had paid in cash. In May, 2022 the tenant paid rent on the 18<sup>th</sup> of the month, and has paid nothing for June, 2022.

The tenant has repeatedly blocked access to the roadway to the landlord's shop by parking there, or his guests, and photographs have been provided for this hearing. The landlord has asked the tenant not to block access, and the photographs show debris all over the ground, which is garbage belonging to the tenant. The tenant has also installed a camera in the landlord's shop invading the landlord's privacy, and has been hostile to the landlord's customers, yelling at them as well as the landlord's employees.

The tenant is spreading rat poison on the property instead of using traps, however this is a farm with chickens, peacocks, cats and dogs.

The tenant also changed the locks to the rental unit sometime in the last month or so to a digital lock without providing the landlord with a code.

With respect to extraordinary damage, the landlord testified that the tenant put expandable foam on the counters and throughout the vents and clean out trap and plumbing. The tenant dismantled the toilet which caused damage to the landlord's business supplies to the shop below. Electrical supplies and the floor is starting to rot, and there is a horrible septic smell. The toilet was new just before the tenant moved in.

A door that lead to a staircase had been closed off by the landlord with screws to keep it shut because there is no staircase outside. The tenant removed the screws and a building inspector was able to open the door. The tenant has also, on several occasions turned off hydro. The fuse box is in the area that the tenant occupies, and said it was shut off by the landlord due to not paying rent, however the hydro to the rental unit is in the tenant's name, so the landlord cannot occupy that space.

In October, 2021 the landlord gave a notice to end the tenancy, but used the wrong form. The parties had a hearing in October and the Arbitrator cancelled the One Month Notice to End Tenancy for Cause. During the hearing the Arbitrator kept asking the landlord if the landlord was moving in, but the landlord wanted to use the space only as dry storage. The Arbitrator at that time cancelled all notices to end the tenancy.

A hearing was also scheduled for March 12, 2022 wherein the tenant applied for an order about restricting services, but the tenant didn't show up and the tenant's application was dismissed. The tenant applied for a review based on a claim that the tenant had faulty cell reception, but the tenant has a land-line. The Application for Review was not successful.

The landlord's insurance company has cancelled the landlord's home owner policy and refuses to renew it. Now the landlord's business is not operational.

The landlord has no intention of re-renting. The landlord is a certified marine mechanic and completes house repairs, farming and the facilities are integral to the landlord's business. The rental unit is not a dwelling and has never had an occupancy permit; there is structural damage and it is not structurally sound.

**The tenant** testified that the One Month Notice to End Tenancy for Cause is not valid because the government order does not exist. The landlord is trying to avoid his responsibility to repair and maintain the rental unit.

When the tenant moved in, the parties were friends and the plan was that the tenant would live there and the money paid to the landlord would be put toward improving the property. Promises were made to make repairs, but nothing was done.

At first rent was \$1,400.00 for the first 2 months, then increased by \$100.00 in August because the tenant's girlfriend was staying with the tenant.

The tenant has had to pay for emergency repairs and testified that the toilet was not installed correctly. The tenant also had to do some pest control for rats.

The tenant also disputes that the landlord has operated a business. On March 9, 2022 the tenant arrived home and found the landlord in the rental unit having thrown the tenant's belongings outside, and took the dead bolts off the door leaving it wide open. The tenant called police after the landlord assaulted the tenant. The tenant recorded everything, and the landlord tried to take the tenant's phone to prevent the tenant from calling 911. The landlord told police he was justified in removing the tenant, but the

police left after seeing the Decision from the February 23 hearing which stated that the tenancy continues until ended under the *Act*. Assault charges are still pending, and the police told the tenant to move his stuff back in.

The tenant was present on March 10 when the building inspector showed up after the landlord told them it was an illegal suite and there is no occupancy permit. The landlord lost at the hearing in February, and this is his solution; to remove the tenant by having it declared an illegal suite. The following day, the landlord kicked the door in while the tenant's girlfriend was sleeping and started throwing stuff off the balcony again. The tenant's girlfriend called police and the landlord was arrested and charged with mischief. Since then, the Crown decided not to proceed but issued a cease and desist order, which the landlord has failed to include as evidence.

Everything the landlord has said is lies, and accusations that the tenant has destroyed things are false. The landlord has gone into the rental unit 5 times that the tenant is aware of without the tenant present.

The tenant wanted a written agreement when rent was increased, but the landlord refused. Rent is not due on the 1<sup>st</sup> of the month, but the tenant moved in on the 5<sup>th</sup> of the month, and that's when the tenant pays rent. A couple of months were late. The rental unit was an Air BNB prior to this tenancy and people were still moving out on the 5<sup>th</sup> of June, 2021 and moved into the landlord's house for a month.

The tenant is bombarded with notices that he has to dispute. The landlord didn't apply for an Order of Possession regarding the Four Month Notice; and the Two Month Notice was retaliatory and in bad faith. There have been 13 notices in as many months, and the tenant just wants the landlord to follow the rules. The landlord has dealt with the Regional District and inspectors. None of this is new; it's not like the landlord suddenly learned the rental unit was not up to standards, and that was the plan – the money the tenant paid for rent would go back into his investment, but the landlord has decided he didn't want to do that.

### Analysis

Firstly, the *Residential Tenancy Act* specifies that a tenancy exists even if it's not in writing, by virtue of a tenant paying rent for a rental unit to occupy.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

The *Act* also specifies that a tenant must pay rent when it is due even if the landlord has failed to comply with the *Act* or the tenancy agreement.

In this case, the tenant disputes that rent is due on the 1<sup>st</sup> of the month, but on the 5<sup>th</sup> day of each month because the tenant moved in on the 5<sup>th</sup> of the month. That makes sense to me, unless the landlord agreed to pro-rate the rent for the first month. There is no evidence of that and therefore I find that rent is due on the 5<sup>th</sup> day of each month.

I have reviewed the One Month Notice to End Tenancy for Cause dated February 25, 2022 and I find that it is in the approved form and contains information required by law. The first reason for issuing it is repeated late rent. The landlord testified that no rent was received for March, 2022; rent for April was paid on the 10<sup>th</sup> of the month; rent for May was paid on the 18<sup>th</sup> and nothing has been paid for June, 2022. The tenant did not dispute that testimony. The landlord also testified that rent was late a number of times in 2021. However, the landlord must prove a minimum of 3 recent late payments of rent. Regardless of when rent was due, on the 1<sup>st</sup> or the 5<sup>th</sup>, I find that the landlord has established repeated late rent and it is not necessary to examine all reasons for issuing the Notice or any of the other notices. The tenant has applied to cancel the Notice, and I dismiss the application.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

The landlord has not applied for an Order of Possession based on the One Month Notice to End Tenancy for Cause, but has applied for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord has not testified how or when it was served, and I am not convinced that that matter hasn't already been dealt with at a previous hearing. Therefore, I decline to order that the landlord recover the filing fee from the tenant.

Since the tenancy is ending, I dismiss all of the tenant's applications without leave to reapply, with the exception of the tenant's applications for monetary compensation, which are dismissed with leave to reapply.



Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed with leave to reapply.

The balance of the tenant's applications is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: July 14, 2022

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Residential Tenancy Branch