



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, LRE, MNRT, FFT

### Introduction

This hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 9, 2022 (the "10 Day Notice") pursuant to section 46;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to sections 29 and 70(1);
- a Monetary Order of \$2,510.00 for the cost of emergency repairs that Tenant made during the tenancy pursuant to section 33; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord's agent CC attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that CC and I were the only ones who had called into the hearing.

I advised CC that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. CC confirmed she was not recording this dispute resolution hearing.

CC confirmed that on May 17, 2022, a package with the Landlord's documentary evidence for this hearing was sent to the Tenant via Purolator (with tracking and signature) at a forwarding address provided by the Tenant. The Landlord submitted a copy of the shipment receipt and a signed note from the Tenant in support. Based on the Landlord's evidence, I find that the Tenant was served with the Landlord's documentary evidence in accordance with 88(c) of the Act. Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the Landlord's documentary evidence on May 22, 2022.

#### Preliminary Matter – Dismissal of Tenant's Application

Rule 7.3 of the Rules of Procedure provides as follows:

##### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the Tenant did not attend for his own application while the Landlord's agent duly attended, and in the absence of any submissions or substantive evidence, I order the Tenant's application dismissed without leave to re-apply.

#### Preliminary Matter – Tenancy Has Ended

CC testified that the Tenant moved out of the rental unit on May 2, 2022. As the Tenant is no longer in possession of the rental unit, I find that it is not necessary to consider whether the Landlord is entitled to an Order of Possession under section 55(1) of the Act. The remaining issue on this application is whether the Landlord is entitled to unpaid rent pursuant to section 55(1.1) of the Act.

#### Issue to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a basement suite. The tenancy had commenced on January 15, 2022 and was month-to-month. Rent was \$1,500.00, due on the first day of each month. The Tenants paid a security deposit of \$750.00 which is held by the Landlord. The parties signed an "Application for Tenancy" but did not otherwise have a written tenancy agreement.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is dated March 9, 2022 and has an effective date of March 19, 2022. The 10 Day Notice states that the Tenant had failed to rent of \$1,500.00 due on March 1, 2022 and failed to pay \$269.00 in utilities.

CC confirmed that a copy of the 10 Day Notice was given to the Tenant in person on March 9, 2022.

CC testified that the Tenant vacated the rental unit on May 2, 2022.

CC confirmed the Tenant did not pay any rent for the period between March 1, 2022 and May 2, 2022.

The Landlord's evidence is that the Tenant shared 50% of the utility costs with the tenants who lived in the suite above the rental unit. The Landlord submitted copies of FortisBC and BC Hydro utility bills which showed they were in the Landlord's name. The Landlord indicated that the Tenant owed the following amounts for utilities:

- \$156.85 for March 2022 FortisBC bill
- \$112.30 for March 2022 BC Hydro bill
- \$168.33 for April 2022 FortisBC bill
- \$87.33 for April 2022 BC Hydro bill

In addition, the Landlord submitted into evidence a copy of a \$1,769.00 cheque received for March 2022 rent and utilities. The Landlord's evidence indicates that the Landlord did not deposit this cheque at the Tenant's request. The Landlord submitted text message correspondence in support. CC confirmed that all of the Tenant's utilities for March and April 2022 remain outstanding.

## Analysis

Section 26(1) of the Act states that a tenant must pay rent when due, 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.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

To be effective, a notice to end tenancy must comply with section 52 of the Act, which states:

### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Based on CC's testimony that the 10 Day Notice was given to the Tenant in person on March 9, 2022, I find the Tenant was served with the 10 Day Notice on that date in accordance with section 88(a) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenant had until March 14, 2022 to dispute the 10 Day Notice. Records show that the Tenant submitted this application late on March 14, 2022. I find the Tenant made this application within the 5-day deadline prescribed by section 46(4)(b).

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Based on CC's undisputed testimony and the Landlord's undisputed evidence, I am satisfied on a balance of probabilities that the Tenant did not pay any rent or utilities due since March 1, 2022. I find that the Landlord has established sufficient grounds for issuing the 10 Day Notice.

Sections 55(1) and (2) of the Act state:

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.

(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.

In this case, I have found that the 10 Day Notice complies with section 52 in form and content, and I have dismissed the Tenant's application to dispute the 10 Day Notice without leave to re-apply. Accordingly, I find that the Landlord is entitled to an order requiring payment of the unpaid rent.

Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case, based on CC's undisputed testimony and the undisputed evidence of the Landlord, I find that the parties had a verbal agreement that requires the Tenant to pay 50% of the utility charges to the Landlord. I accept that copies of the utility bills have been sent to the Tenant as of May 17, 2022 at the latest, and the Tenant's portion of the

charges remain unpaid for more than 30 days. I therefore conclude that the Tenant's unpaid utility charges may be awarded to the Landlord as unpaid rent.

For the purpose of determining the amount that is to be awarded to the Landlord, Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states as follows:

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the [Act] [...]

[...]

If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

In this case, I accept the Landlord's undisputed evidence that the Tenant left the rental unit on May 2, 2022. Pursuant to 68(2) of the Act, I order that the tenancy ended on May 2, 2022 for the purpose of calculating unpaid rent owing to the Landlord.

Pursuant to section 55(1.1) of the Act, I award the Landlord \$3,621.58 in unpaid rent (including unpaid utilities) for the period from March 1, 2022 to May 2, 2022 (see calculations below).

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the \$750.00 security deposit held by the Landlord in partial satisfaction of the total sum awarded in this hearing.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

<b>Item</b>	<b>Amount</b>
March 2022 Rent	\$1,500.00
March 2022 FortisBC	\$156.85
March 2022 BC Hydro	\$112.30
April 2022 Rent	\$1,500.00
April 2022 FortisBC	\$168.33
April 2022 BC Hydro	\$87.33
May 2022 Rent (pro-rated to May 2, 2022)	\$96.77
<b>Subtotal</b>	<b>\$3,621.58</b>
Less Security Deposit	- \$750.00
<b>Total Monetary Order for Landlord</b>	<b>\$2,871.58</b>

### Conclusion

The Tenant's application is dismissed without leave to re-apply.

The Landlord is authorized to deduct the full amount of the Tenant's \$750.00 security deposit in partial satisfaction of the sum awarded in this application.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of \$2,871.58. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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