



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      CNR MNRT FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The landlord acknowledged receipt of the tenant's application. The landlord raised an issue with not receiving some of the tenant's evidence with the hearing package. However, as this evidence only consisted of e-mail correspondence previously exchanged between the parties it was permitted. The tenant had only provided a copy of the 1<sup>st</sup> page of the 10 Day Notice subject to this dispute. The landlord had uploaded a complete copy of the 10 Day Notice on a separate file involving the parties which was scheduled to be heard at a later date (#310077918). I was able to view the full 10 Day Notice on that related file.

### Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the tenant entitled to a monetary order for the cost of emergency repairs and recovery of the filing fee?

### Background and Evidence

The tenancy began on June 1, 2021, with a monthly rent of \$1950.00 payable on the 1<sup>st</sup> day of each month. The rent was set to increase to \$1980.00 effective July 1, 2022. The tenant paid a security deposit of \$975.00 at the start of the tenancy.

The parties agreed that the tenant received the 10 Day Notice on June 13, 2022. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$1950.00 which was due on June 1, 2022.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served. The landlord testified that on June 11, 2022, the tenant did make a partial payment for June 2022 rent but \$400.00 still remains outstanding.

The landlord testified that the tenant has been late in making rent payments since October 2021. The landlord testified that after he served the tenant with the 10 Day Notice the tenant became confrontational and handed him an invoice for replacing a kitchen faucet. The landlord testified that the tenant has also since not paid July and August 2022 rent.

The tenant testified that the kitchen faucet was broken, and the landlord provided permission for it to be fixed. The tenant submitted e-mails from February 2022 which she claims support the permission. The tenant also submitted an invoice dated June 15, 2022, from the tenant to the landlord in the amount of \$400.00 for the repair work. The tenant argues this was an emergency repair therefore deducted from the rent. The tenant acknowledged rent has not been paid for July and August 2022 and claims it has been withheld due to various outstanding repair work needed in the rental unit.

The landlord testified that he only allowed the tenant to replace the faucet as the tenant asked to do the work herself stating she had experience. The landlord testified he purchased the faucet and the tenant only did the install. The landlord argues this does not fall under an emergency repair under the Act.

### Analysis

Section 26 of the Act requires that 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.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [*landlord's notice: non-payment of rent*] an order requiring the payment of the unpaid rent must also be granted. However, the amount a tenant can be ordered to pay in such cases is limited to the amount as per the 10 Day Notice. The landlord seeking additional compensation is required to make a separate application and provide proper notice to the tenant in accordance with the legislation.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 33 of the Act describes "emergency repairs" as those repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Subsection 33(3) of the Act sets out that a tenant may make emergency repairs where emergency repairs are needed, the tenant has made at least two attempts by phone to

contact the landlord, and the tenant gave the landlord a reasonable amount of time to make the repairs.

I find the tenant has submitted insufficient evidence to demonstrate that there was a major leak in the piping for the repairs to be considered “emergency repairs” as contemplated under the Act. Rather, I find that it was just a casual faucet replacement which the landlord agreed the tenant could perform on her own as per her request. There was no discussion of any billing or deduction from rent and in fact the tenant did not produce an invoice until four months later only after being served with a 10 Day Notice. I find the tenant’s invoice to be fabricated and unreasonable given the nature of repair work that was required. Therefore, I dismiss the tenant’s application to be reimbursed for emergency repairs and find that the tenant did not have a right under the Act to deduct this amount from rent payable.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

The landlord is granted a monetary award in the amount of \$400.00, which is the balance outstanding from the 10 Day Notice dated June 13, 2022.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of \$400.00. 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: August 15, 2022

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Residential Tenancy Branch