



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **TT: CNR, MNDCT, RR, FFT**  
                                 **LL: OPR-DR, MNR-DR, FFL**

### **Introduction**

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agents, with agent AG primarily speaking (the “landlord”).

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them together.

I was originally scheduled to only hear the tenant's application seeking a monetary award and rent reduction but as the parties consented to the matters being combined and as I find that the applications pertain to the same issues regarding payment of rent and the same facts would be considered I ordered that the matters be combined.

As both parties were present service was confirmed. The parties each testified that they received all of the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

#### Issue(s) to be Decided

Is either party entitled to the relief sought?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the background facts. This periodic tenancy began on April 1, 2022. The monthly rent is \$2,500.00 payable on the first of each month. A security deposit of \$1,300.00 was paid at the outset of the hearing and is still held by the landlord. The rental unit is the main floor of a detached home with two-units.

The tenant was issued a 2 Month Notice to End Tenancy for Landlord's Use dated July 10, 2022 with an incorrect effective date of September 15, 2022. The tenant made some remarks about disputing the 2 Month Notice but the Branch records clearly show no such application to dispute a 2 Month Notice has been filed by the tenant.

The tenant submits that over the course of the tenancy they have performed duties on behalf of the landlord including cleaning of common areas, showing the downstairs suite to potential occupants, managing other tenants in the property, arranging for repairs,

cleaning and service for the property and generally acting as a de facto property manager. The tenant submitted into evidence copies of text message communications with the landlord in support of their position that the work was authorized by the landlord. The tenant says there was no agreement about fees for the work performed nor was there an agreement that the tenant would be reimbursed for expenses incurred.

The landlord disputes that there was an agreement with the tenant for services and says that any work done by the tenant was either voluntary by the tenant or more in the nature of simple requests such as allowing access to the property. The landlord disputes that there was any agreement allowing the tenant to withhold any amount of the rent for work performed.

The tenant did not pay rent as required under the tenancy agreement on August 1, 2022. The landlord issued a 10 Day Notice for Unpaid Rent dated August 4, 2022 indicating an arrear of \$2,500.00. The tenant did not make any payment against the arrear. The tenant filed their application to dispute the 10 Day Notice on August 9, 2022. The tenant submits that they are entitled to withhold rent due to the value of the work performed during the tenancy and out-of-pocket costs for repairs and maintenance.

The tenant subsequently did not pay rent on September 1, 2022. The tenant says that they are entitled to withhold the last month's rent pursuant to section 51(1) of the Act.

The parties agree that the tenant will vacate the rental unit by the end of this month and consented to an Order of Possession in the landlord's favour being issued for an effective date of September 30, 2022.

The tenant seeks authorization that they are entitled to withhold rent for the months of August and September 2022 and an additional monetary award. The landlord seeks a monetary award for the unpaid rent for this tenancy of \$5,000.00.

### Analysis

Section 19 of the *Act* provides that a security deposit must be no greater than the equivalent of  $\frac{1}{2}$  of one month's rent payable under the tenancy agreement.

The parties agree monthly rent is \$2,500.00 and a deposit of \$1,300.00 was collected. As such I find that \$50.00 of the collected amount is an overpayment that the tenant is entitled to recover.

Pursuant to section 26(1) a tenant must pay rent when it is due under the tenancy agreement unless they have a right to deduct a portion of the rent.

I find no basis for the tenant to withhold the rent for this tenancy beyond the overpayment of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the totality of the evidence, I am unable to find that there is any agreement between the parties where the tenant is allowed to withhold rent for services or out-of-pocket expenses. The text communication between the parties merely shows the tenant periodically taking some action unilaterally or at the request of the landlord. There is insufficient evidence that there were specified duties, a reporting structure or expectation that the tenant perform work in exchange for consideration. I find little evidence that the tenant was authorized to withhold rent that was payable under the tenancy agreement.

I find the nature of the work and out-of-pocket expenses that the tenant submits they performed including garbage bins and cleaning are not emergency repairs as set out in section 33(1) of the *Act* and are not expenses for which the tenant would be entitled to reimbursement or recovery.

I find no basis for the tenant's claim for a monetary award or reduction in the rent. I find insufficient evidence that there was an agreement between the parties where the tenant was entitled to make deductions from the rent payable. I find little evidence that the landlord withheld services or facilities under the tenancy agreement causing a reduction in the value of the tenancy giving rise to a monetary award.

I accept the undisputed evidence of the parties that the tenant failed to pay rent as required under the tenancy agreement on August 1, 2022.

As noted above, I find the tenant had no basis to unilaterally withhold the rent payable and they were obligated to pay the full amount of \$2,500.00 less the overpaid deposit of \$50.00. I accept the evidence that the tenant did not make any payment and there was a basis for the landlord to issue the 10 Day Notice of August 4, 2022.

I am satisfied with the form and content of the 10 Day Notice as it is signed and dated, identifies the parties, the address of the rental unit, the service address of the landlord and the reason for the tenancy to end; the unpaid rent of \$2,500.00 payable on August 1, 2022.

Accordingly, I find the landlord has established the basis for an Order of Possession pursuant to section 55. I dismiss the tenant's application to cancel the 10 Day Notice and issue an Order in the landlord's favour. I find the landlord is entitled enforceable on the effective date of the 10 Day Notice, August 14, 2022. However, as the parties have agreed to an Order effective on September 30, 2022, I issue one for that date.

I find that this tenancy is ending on the basis of the 10 Day Notice of August 4, 2022 and not the 2 Month Notice of July 10, 2022. As I have found that the landlord is entitled to an Order of Possession on the basis of the 10 Day Notice, I find the 2 Month Notice is of further force or effect. I therefore find the tenant is not entitled to withhold rent pursuant to section 51 of the *Act*.

I am satisfied with the evidence that the tenant has not paid any rent for the months of August and September 2022 and the arrear for this tenancy is \$5,000.00. I issue a monetary award in the landlord's favour for that amount accordingly.

I find the tenant has not met their evidentiary onus on a balance of probabilities, I dismiss their application for a monetary award and reduction of rent.

As the landlord was successful in their application, they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The tenant's applications are dismissed in their entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **12:00pm on September 30, 2022**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$3,800.00 on the following terms:

Item	Amount
Unpaid Rent (2 x \$2,500.00)	\$5,000.00
Less Overpayment	-\$50.00
Less Security Deposit	-\$1,250.00
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$3,800.00</b>

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: September 16, 2022

---

Residential Tenancy Branch