



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1805797 ALBERTA LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, RR, RP, RPP, LRE, OLC, FFT

### Introduction

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

1. an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 2, 2022 ("10 Day Notice");
2. a Monetary Order of \$2,700.00 for damage or compensation under the Act;
3. an Order to reduce the rent for repairs, services or facilities agreed upon, but not provided;
4. an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
5. an Order for the Landlord to return the Tenant's personal property;
6. suspension or restriction of the Landlord's right to enter;
7. an Order for the Landlord to Comply with the Act or tenancy agreement; and
8. recovery of their \$100.00 Application filing fee.

The Tenants, an agent for the Landlord, E.R. ("Agent"), and the Landlord's counsel, P.V. ("Counsel"), 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 Agent 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 Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application

for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlord with the Notice of Hearing documents and all of their evidence on September 22, 2022, or two days prior to the hearing. However, as I noted in the hearing, the Rule 3.1 states that an applicant must within three days of the Notice of dispute resolution Proceeding Package being made available by the RTB, serve each Respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

The Rules allow an applicant to submit additional evidence that may not be available when they apply for the hearing; however, pursuant to Rule 3.14, the applicant must provide the RTB and the respondent with this additional evidence at least 14 days prior to the hearing.

In the hearing, the Tenants indicated that they had understood that they had to provide these documents to the Landlord within three days of the hearing. As this is not the case, I found it necessary to dismiss the Tenants' Application wholly, without leave to reapply.

Given the Tenants' late service of their Notice of Hearing and evidence to the Landlord, the Landlord was not able to respond within the timelines set out in Rule 3.15 for respondents. "The respondent's evidence must be received by the applicant and the RTB not less than seven days before the hearing." As the Landlord was not given this opportunity by the Tenants, I found that I could still consider the Landlord's evidence before me, as is relevant to the 10 Day Notice.

I explained that the onus is still on the Landlord to prove that the eviction notice was valid and consistent with the Act as to form and content pursuant so section 52 of the Act. As such, we continued with the hearing to review this matter.

### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and they 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 admissible 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.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?

### Background and Evidence

The Parties agreed that the fixed-term tenancy began on August 1, 2022, and is scheduled to run to July 31, 2025. They agreed that the tenancy agreement requires the Tenants to pay the Landlord a monthly rent of \$2,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,400.00, and no pet damage deposit.

In the hearing, the Parties confirmed the contents of the 10 Day Notice. They agreed that it was signed and dated September 2, 2022, it has the rental unit address, it was served in person on September 2, 2022, with an effective vacancy date of September 17, 2022, which is automatically corrected by the Act to be September 12, 2022. The 10 Day Notice was served on the grounds that the Tenants failed to pay \$196.35 in rent when it was due to the Landlord on September 1, 2022.

In the hearing, I asked the Agent why I should award the Landlord with an order of possession of the residential property in these circumstances, and he said: "The Tenant has consistently failed to pay – a second time in October - but we're talking about September. He paid less than the contractual amount: he paid \$2,603.65."

The Tenant confirmed that he had paid the Landlord the amount quoted, and the Tenant acknowledged that the rent owing pursuant to the tenancy agreement was \$2,800.00. The Tenant also said:

I also agree that things need to be in working order.... I have the right to get them

fixed. As per the rules of your own Tenancy Act. He highjacked a room and a half of our residential property, so a storage fee was taken off, as well. We rented the whole property and those were the necessary reason for deductions. We took on the repairs ourselves.

I called your office and they said I can do it this way. If I take over the repairs, myself, I have the right to make deductions. It's right off the thing. I had them done at a reasonable cost. It says right there that I can take it off.

I asked the Tenant what repairs he had done, and he said:

First, the dryer that was loosely fitted was melting tape and shooting debris over the house. That's a severe fire hazard. The rest of the deduction was because the Agent was storing stuff not in the agreement. He trespassed continually, demanding that he needed to take off the square footage of the house. I simply deducted the amount.

Also, a broken AC unit I had fixed after the Landlord referred me to the internet. We eventually had a repairman. He found a defective unit outside not cooling properly.

The Agent responded:

The first thing that happened is they contacted us through texting that the AC unit wasn't working properly. We went directly to the property. They weren't home. I immediately got in contact with a contractor. We established that they should contact the Tenants to make the appointment, so that it would be done at the Tenants' convenience.

This transpired immediately. The appointment was for September 18<sup>th</sup>. I also posted a 24-hours notice that I'll be on the property, if assistance was needed. The tech phoned me and said there's no one home for the appointment and 'can you come up'? I came up. He said he can fix it, which was great. Later that afternoon, the [Tenants] contacted the tech who went back, checked the AC system inside and he did so. Then I received a blistering phone call saying I was delinquent. I still have the phone call recorded.

For the event, I went back to the company I used faithfully, and established the

conversation. Did the tech reappear? .... The [Tenants] were a no show for their appointment. They did not have the tech's comments or opinions, so I cleared that matter up with the [tech's company].

I asked the Agent about the Tenants' second reason for deducting from the September rent owing – because the Agent was storing some possessions in the residential property. The Agent explained that the Parties know each other through business, as the Tenant's drywall company did some work for the Agent on the residential property and another property prior to the tenancy. The Agent said:

I had to fire the first [drywallers], and [the Tenants' company] was brought in to replace those drywallers. Right after August 2021, my second property was vandalized by transients. I engaged the [Tenants' company], and they also attended. So, they said 'We're looking for a place', and we struck a deal verbally. I saw their work, and I was satisfied, so I said the place you worked on, and were they interested? Yes, they were, so we started discussing it in June [2022].

They knew that I was finishing up and engaged on the second property, and I would not be finished for you to get into the first place in August, unless I can leave some belongings there. Once they got into the property, the conversation started to fly there. We made arrangements to pick up our property on September 8<sup>th</sup>. They replied, 'You can come and get your belongings, but [the Agent] is not to attend'. We already arranged for the movers, and I was not permitted to be in my own house. Apparently, I barged in, which is not true. We paid the movers to come and get our stuff, and they moved the remaining furniture - a couple sofas....- to a vacant area in the 1500 square foot basement [of the rental unit] – it was not a problem at the time.

They knew I couldn't move into the other property with this furniture. My wife decided we would wing it, and leave some belongings behind. All was good until the ruckus started on multiple levels. Correspondence came from them with claims of slander, harassment, name calling, I couldn't be on the property, and they called the cops.

We filed notice to view the property to see it. . . . They told us in advance that they're not paying full rent. I engaged the lawyer, because after the AC phone call and the correspondence that flew from the [Tenants], which clearly was telling me I was not to appear on my property. We went with these people because [he] was familiar with the property, they needed more space, he grew

up near here, they did good work. But they never came across as someone who insisted I couldn't come on my own property.

The emails continued - I couldn't put a stop to it. They said, 'If you show up, you're trespassing...'. They phoned the cops when we made proper 24-hour notice.

The Tenants noted that the storage of the Agent's property at the residential property was supposed to be "temporary, not there indefinitely". They also said:

We just asked that the stuff be removed and it went up without a hitch. We didn't call the cops then. The stuff was contained largely to the basement. Somehow the Landlord needed to have – his photo-taking and video documentation was intrusive. I don't see the need to wandering around recording anything. I again, say that's harassment.

I asked the Agent how much rent is outstanding as of the date of the hearing, and the Agent provided the following information.

<b>Date Rent Due</b>	<b>Amount Owing</b>	<b>Amount Received</b>	<b>Amount Owing</b>
Sep. 1/22	\$2,800.00	\$2,603.65	\$196.35
Oct. 2/22	\$2,800.00	\$2,574.63	\$225.37
	<b>TOTAL</b>		<b>\$421.72</b>

The Agent said the Tenant told him the October deduction was for "...something like lawyer's fees".

The Parties agreed that the deductions from the September 2022 rent were \$196.35, of which 4.3% of a month's rent or \$117.60 was for storing the Landlord's property. I find that this is 60% of the total amount deducted from rent.

Both Parties declined to provide any further evidence when I offered them an opportunity to make any last statements before the hearing ended.

## Analysis

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

While in the hearing I advised the Tenant that he could not deduct funds from rent owing if he had made repairs without an Order of the Director. However, the Tenant was correct about being able to deduct rent owing in a certain set of circumstances that are set out in section 33 of the Act, which addresses “Emergency repairs”.

Section 33 of the Act sets out that “emergency repairs” are “urgent, necessary for the health or safety of anyone or for the preservation or use of residential property.” The Act also states that emergency repairs are made for the purpose of repairing:

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

Further, section 33 sets out a detailed chain of events that must occur before a tenant may deduct anything from rent for emergency repairs. The Tenants did not take me through this chain of events in this regard.

In the hearing, the Tenants said that they repaired a loose connection to the dryer and paid to have an air conditioning unit repaired. There was no indication that the air conditioner was part of a heat pump; therefore, I find there is no evidence before me that the air conditioner was part of the primary heating system. I find that these are not “emergency repairs” as set out in the Act. The Tenant did not cite a section of the Act that allows them to deduct rent owing for repairs that they had arranged.

Further, the Tenants said, and my calculations above confirm that most of the deduction was identified by the Tenants as for “storage fees”, because the Agent was storing some of his possessions in a section of the residential property. The Tenants did not dispute the Agent’s claim that they had discussed this storage and that there was no discussion of a cost being charged for it. Again, the Tenants did not refer me to a section of the Act that authorizes them to deduct rent owing in this set of circumstances.

Section 26 of the Act states: "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 this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord. As such, I find the Landlord had the right to serve the Tenants with a 10 Day Notice for failing to pay their full rent owing in September 2022. I also find that the 10 Day Notice is consistent with section 52 of the Act, as to form and content.

**Pursuant to section 55** of the Act, I, therefore, award the Landlord with an **Order of Possession**. The **Order will be effective two days after** it is deemed **served to the Tenants**, given that the effective vacancy date has passed, and because the undisputed evidence before me is that the Tenants did not pay full rent in October 2022.

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;

I upheld the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary award pursuant to the Tenants' Application.

The Parties agreed in the hearing that the Tenants neglected to pay the Landlord a sum of \$421.72 in rent for September and October 2022. Accordingly, pursuant to section 55 (1.1) of the Act, I award the Landlord with **\$421.72** from the Tenants. I authorize the Landlord to **deduct \$421.72** from the Tenants' **\$1,400.00 security deposit** in complete satisfaction of this award, pursuant to sections 72 and 67 of the Act.

As noted above, the Tenants' Application is dismissed wholly without leave to reapply, pursuant to section 62 of the Act.

### Conclusion

The Tenants are unsuccessful in their Application, as they failed to serve the Landlord properly with their Notice of Hearing and evidence, and because the Landlord provided



sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenants' Application is dismissed wholly without leave to reapply.

**Pursuant to section 55 of the Act**, the Landlord is awarded an **Order of Possession** for the residential property, **effective two days after service** of the Order to the Tenants, pursuant to the Act. This Order must be served on the Tenants by the Landlord and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 26 and 55 (1.1) of the Act, I **award the Landlord with \$421.72** from the Tenants for recovery of unpaid rent that was illegally deducted from rent in September and October 2022. The Landlord is authorized to retain **\$421.72** from the Tenants' **\$1,400.00** security deposit in complete satisfaction of this award.

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: October 26, 2022

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Residential Tenancy Branch