



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **DRI-ARI-C, CNR, OLC**

### **Introduction**

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on May 28, 2022 to dispute a rent increase for capital expenditures, an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord, and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The tenant and the landlord's agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Preliminary and Procedural Matters-**

The landlord denied they received the tenant's application and stated that they had not filed evidence.

I find the tenant submitted insufficient evidence to show that the landlord was served properly with her Application for Dispute Resolution, evidence, and Notice of Hearing (application package). However, the hearing proceeded on the parties' testimony and the tenant's documentary evidence insofar as it was relevant to the merits of the Notice.

As to the tenant's dispute of a rent increase for capital expenditures, I find there is no evidence the tenant received a rent increase for capital expenditures. It appeared that the tenant was in error in marking this claim. I therefore dismiss this claim, without leave to reapply.

#### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice?

Is the landlord entitled to an order of possession of the rental unit and a monetary order consisting of unpaid monthly rent?

#### Background and Evidence

This tenancy began on February 5, 2021, according to the tenant. The tenant did not supply a readable copy of a written tenancy agreement. The monthly rent is based on income.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that the tenant was served with the Notice on May 18, 2022, by registered mail. The Notice listed the outstanding rent deficiency of \$1,285.37 owed as of May 1, 2022. The effective move-out date listed was May 31, 2022. The tenant submitted the Notice into evidence.

The landlord testified that the tenant failed to provide the required paperwork for the rent geared to income calculation, so the tenant's monthly rent increased from \$344 in January 2022, to \$665 in February 2022.

The landlord testified that the tenant failed to pay the outstanding rent deficiency within 5 days and that they did not receive any rent payments until June 7, 2022.

The landlord said that the tenant paid \$338.86 on June 7, \$338.63 on July 7, \$622.80 on August 8, and \$662.80 on September 7, 2022, leaving a total rent deficiency of \$1,982.28 as of the end of September 2022.

This accounting was also provided in the tenant's evidence.

The landlord said they had not received the tenant's monthly rent for October 2022 as of the day of the hearing.

*Tenant's response-*

The tenant's application was made on or about May 28, 2022, and in her application, she stated she received the Notice on May 27, 2022.

In response, the tenant confirmed the amounts paid, but that the monthly rent for October has been paid. The tenant explained that her rent has been received, but due to administrative procedures, the monthly rent is not usually reflected for several days after the first of the month.

During discussions, the landlord agreed that if I issued an order of possession of the rental unit to the landlord, the effective date could be November 30, 2022 so long as the monthly rent for October and November 2022 is paid.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The Notice is not effective earlier than ten days after the date the tenant received it. In this case, the landlord served the Notice on May 18, by registered mail. Section 90 of the Act deems it was delivered on the fifth day, or in this case, May 23, 2022.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of May 31, 2022, on the Notice, is changed to June 2, 2022.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days. I find that the tenant applied within the required time limit.

I find the landlord submitted sufficient evidence to prove that the tenant owed the monthly rent deficiency listed on the Notice. I also find the landlord submitted sufficient evidence to show that the tenant failed to pay the rent deficiency within 5 days of receipt and that the landlord began receiving partial payments of rent beginning June 7, 2022.

I find the tenant submitted insufficient evidence to show that she had a legal right to withhold rent or that she did not owe the landlord the rent claimed.

I therefore find the landlord submitted sufficient evidence to support the Notice. As a result, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenant's application seeking cancellation of the Notice.

I find that the landlord is entitled to, and I therefore grant them, an order of possession for the rental unit effective on November 30, 2022, pursuant to section 55(1)(b) of the Act.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

The tenant is cautioned that the monthly rent for November 2022 is due and payable, her understanding of which was confirmed at the hearing.

### **Monetary order –**

I find that the landlord submitted sufficient evidence to show that while the tenant paid installment payments of the overdue rent, the tenant did not pay all rent owed through September 2022.

Section 55(1.1) of the Act applies and states:

55(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.**

[Emphasis added]

Pursuant to section 55(1.1) of the Act, I order the tenant to pay the landlord the amount of \$1,982.28, which is comprised of a rent deficiency through September 2022.

As a result, pursuant to section 62(3) of the Act, I grant the landlord a final, legally binding monetary order for the amount of their monetary award of \$1,982.28.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

As the tenancy is ending, I dismiss the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, without leave to reapply.

### Conclusion

The tenant's application is dismissed without leave to reapply as I find the landlord submitted sufficient evidence to support the 10 Day Notice.

The landlord is granted an order of possession of the rental unit effective November 30, 2022.

The landlord is granted a monetary order in the amount of \$1,982.28 comprised of the rent deficiency through September 2022.

The balance of the tenant's application is dismissed, without leave to reapply, for the above reasons.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 13, 2022

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Residential Tenancy Branch