



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR

For the landlord: OPR, OPN, MNR-S, FF

### **Introduction**

This hearing was convened as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord.

The landlord applied for an order of possession of the rental unit pursuant to the Notice, an order of possession of the rental unit based upon the tenant's written notice, a monetary order for unpaid rent, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the cost of the filing fee.

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

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

The landlord confirmed receiving the tenant's application and the tenant confirmed receiving an envelope from the landlord that he did not read. I find that both parties were sufficiently served the other's application, as failure to read the documents does not override being served the documents. No issue was made of the service of evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

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

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit based upon the Notice or the tenant's written notice to vacate, a monetary order for unpaid rent, and recovery of the cost of the filing fee?

#### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of December 1, 2021, monthly rent of \$1,650, due on the 1<sup>st</sup> day of the month, and a security deposit of \$800 being paid by the tenant to the landlord.

The parties were informed the landlord would proceed first in the hearing to explain or support their Notice, as required by the Rules.

The landlord said that on June 6, 2022, the tenant was served the Notice, by attaching it to the tenant's door, listing unpaid rent of \$2,850 owed as of June 1, 2022. The effective vacancy date listed on the Notice was June 20, 2022. The tenant confirmed receiving the Notice on June 6, 2022. Filed into evidence by both parties was a copy of the Notice.

The landlord submitted that the unpaid rent listed on the Notice was a rent deficiency of \$1,200 for May and the monthly rent of \$1,650 for June 2022. The landlord asserted that since the issuance of the Notice, the amount of \$450 was paid on behalf of the tenant for June, July, August and September, each month, and no rent for October 2022. The landlord said as of the day of the hearing, the tenant owed a total of \$7,650 in unpaid rent.

*Tenant's response-*

In response, the tenant did not deny the rent payment history stated by the landlord, but asserted there were issues with the rental unit. The tenant submitted that he was afraid to leave the rental unit because he thought the landlord would remove his personal property.

Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

*Landlord's application-*

**Order of possession of the rental unit –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that he had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, he confirmed the landlord's evidence that he had not paid the monthly rent listed on the Notice and confirmed the landlord's evidence as to the insufficient rent paid of \$450 for each month from June through September and none at all in October 2022. Although the tenant indicated he had reason not to pay the rent, his remedy would be to pay the

monthly rent due under the tenancy agreement and file for dispute resolution to have any issues addressed.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to, and I grant an **order of possession** for the rental unit **effective 2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the 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.

It was not necessary to consider the landlord's request for an order of possession based upon the tenant's written notice to vacate as I upheld the 10 Day Notice.

#### **Monetary order –**

I also find that the landlord submitted sufficient and undisputed evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, and only paid \$450 each for June through September 2022, and no rent for October 2022, for a total of \$7,650 deficiency.

The landlord's monetary claim accounted for unpaid rent through September 2022, and I find it reasonable under the circumstances to allow the landlord's monetary claim be amended to include unpaid rent for October 2022, as allowed by the Rules.

I therefore find the landlord is entitled to a monetary award of **\$7,750**, comprised of a total amount of unpaid rent of \$7,650 through October 2022, and the **\$100** filing fee paid by the landlord for this application.

At their request, I authorize the landlord to retain the tenant's security deposit of **\$800** in partial satisfaction of their monetary award.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of **\$6,950**.

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.

*Tenant's application-*

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I **dismiss** the tenant's application for cancellation of the Notice, **without leave to reapply**.

Conclusion

**The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.**

**The tenant's application is dismissed without leave to reapply as I have granted the landlord's application in full.**

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 25, 2022

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Residential Tenancy Branch