



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, RP

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46;
- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Service

The tenant applied for dispute resolution on September 19, 2022. The tenant testified that he served the landlord with his application for dispute resolution and evidence via registered mail within the required time period. The landlord testified that he received

the above documents on October 1<sup>st</sup> or 2<sup>nd</sup>, 2022. I find that the landlord was served with the above documents in accordance with section 89 of the *Act*.

The landlord did not submit evidence for consideration.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Notice.

Section 55(1) and section 55(1.1) of the *Act* states that if the Notice complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice, pursuant to section 46 of the *Act*?
2. Is the landlord entitled to an Order of Possession, pursuant to section 55(1) of the *Act*?
3. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 55(1.1) of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2022. Monthly rent in the amount of \$1,400.00 is payable on the first day of each month.

Both parties agree that the landlord emailed the tenant the Notice on September 16, 2022. The tenant testified that he received the Notice on September 16, 2022. The tenant filed to dispute the Notice on September 19, 2022. The Notice was entered into evidence, is signed by the landlord, is dated September 16, 2022, gives the address of the rental unit, states that the effective date of the notice is September 29, 2022, is in the approved form, #RTB-30, and states the following ground for ending the tenancy:

You have failed to pay rent in the amount of \$2,900.00 that was due on September 1, 2022.

Both parties agree that they discussed the tenant cleaning up and repairing the yard of the subject rental property in exchange for a combination of monetary compensation and rent reductions.

The tenant entered into evidence undated text messages that he testified were sent in March 2022:

- Landlord: So...as we discussed, how much would you want to do up the backyard/gardens, and would you be open to trading that work for rent adjustments?
- Tenant: If you need anything from me just ask you have given me the opportunity to have a home and all I will do is pay my rent on time respect your property and be the best freaking tenant u have ever had.
- Tenant: I'll haul everything away clean up yard etc making everything look good for 1500 ? Instead of the 2000 rough quote idea from 1 800 junk .. if you were cool with that rough estimate of 1500 if we could do maybe 500 off rent .. say 250 off one month and 250 of another and 1000 cash or...[text cut off]

- Tenant: Just snow balling here but I'm a very useful person to have a round there are many things I am capable of getting done.
- Landlord: I'm good with that figure.
- Landlord: How would you feel about half off May and half of June? April is a 3 mortgage payment month for me, so I am very leery of f'ing with that one. Now that neighbour has tapped out of buying, I can guarantee you a longer time frame (though I'm still not sure how long), and I will also give you a glowing reference down the road when someone does buy (spitballing here)
- Landlord: As an alternative, I could just waive may entirely
- Tenant: I was really leaning towards the 1000 cash and 500 off rent split up if possible im trying to get my car out of the shop and when u mentioned the 1800 junk I thought I would give it a chance to get all of what u need done cheaper and me get my car back just getting back on my feet this is my last obstacle I have in my way.
- Landlord: Of course.
- Landlord: Let me explore a bit more

Both parties agree that no firm agreement regarding rent reductions or cash payments from the landlord to the tenant were made and that the tenant paid rent in full from March to June 2022. Both parties agree that the tenant paid \$1,300.00 towards July 2022's rent and has not paid any rent for August, September, October or November 2022.

The tenant testified that on August 5, 2022 the landlord texted him to remind him to pay August 2022's rent. The tenant entered into evidence his responding text message dated August 5, 2022 which states:

- Tenant: I didn't realize what the date was my apologies.. and remember we were talking about things for Aug and Sep with rent and stuff I've been doing we never got a chance to talk about that

In the August 5, 2022 text message, the tenant sent the landlord a screen shot of a previous text message exchange between the parties from June 2022 which states:

- Tenant: Hey [landlord] sorry for the late txt just finished loading up the second load of all the brush and shot I cut down next step is tilling garden beds and adding all the soil in driveway then just regular up keep.. can u please get this fire place sorted it's a major eye soar and I've been working my as doff [sic] to make

this place nice for the summer let me know what u comp up with I'll call around and get some quotes for replacing glass

- Landlord: I've got quotes, it is 1500-1700 for the glass
- Landlord: I should be getting some kind of bonus on the 10<sup>th</sup>, I'll try to get it done then, been tough with my ex not contributing for the last 2 yrs
- Landlord: I appreciate all you are doing, happy to talk about adjusting Aug and/or Sept rent.

Following the above screenshot, the August 5, 2022 text exchange between the parties continues as follows:

- Tenant: I have to hit bank after work
- Landlord: No worries, I'm actually more concerned about your internet
- Tenant: I got that sorted out ..I've had phone calls with Telus about the [text message cut off]

The tenant testified that since the landlord had not yet paid him for his work on the subject rental property, he withheld rent for August, September and October 2022. The tenant testified that he hasn't paid November 2022's rent because he might have to move following this arbitration.

### Analysis

Based on the testimony of both parties, I find that the tenant was sufficiently served with the Notice, for the purposes of the *Act*, pursuant to section 71 of the *Act*, on September 16, 2022 because receipt was confirmed.

Based on the testimony of both parties and the text messages entered into evidence, I find that the tenant completed work on the subject rental property and that the parties discussed the possibility of rent reductions and monetary compensation in exchange for that work.

Based on the testimony of both parties and the text messages entered into evidence, I find that the parties never agreed to a specific method or quantum of reimbursement for the work completed.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

I find that since the parties never agreed to a specific rent reduction in exchange for the work completed, the tenant was not permitted under section 26(1) of the *Act* to unilaterally decide to withhold rent.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Based on the testimony of both parties I find that the tenant has not paid any rent for August to November 2022 and only paid \$1,300.00 towards July 2022's rent. I find that the tenant was not authorized, under the *Act*, to withhold rent money. As the tenant did not pay the overdue rent within five days of receiving the Notice, I uphold the Notice and dismiss the tenant's application to cancel the Notice.

Section 55(1) and section 55(1.1) of the *Act* state:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (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.

(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.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,

- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #30.

Since I have dismissed the tenant's application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession pursuant to section 55(1) of the *Act*.

Since I have dismissed the tenant's application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

Residential Tenancy Guideline #3 states:

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy. If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

Pursuant to Residential Tenancy Policy Guideline #3 and section 68(2) of the *Act*, I order that the tenancy ended effective November 4, 2022 (the date of the dispute resolution hearing), and that the landlord is entitled to unpaid rent from July 1, 2022 to November 4, 2022. If the landlord suffers further loss due to the tenant overholding, the landlord is at liberty to file an application for dispute resolution seeking damages for overholding. I find that the landlord is entitled to rent from July 2022 to October 2022 in the amount of \$4,300.00, comprised as follows:

- July 2022: \$100.00,

- August 2022: \$1,400.00,
- September 2022: \$1,400.00, and
- October 2022: \$1,400.00

I find that the landlord is entitled to per diem rent for November 1, 2022 to November 4, 2022 pursuant to the following calculation:

$\$1,400.00 \text{ (rent)} / 30 \text{ (days in November 2022)} = \$46.67 * 4 \text{ (days tenancy ongoing in November 2022)} = \$186.68.$

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants 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 to the landlord under the following terms:

Item	Amount
July 2022 unpaid rent	\$100.00
August 2022 unpaid rent	\$1,400.00
September 2022 unpaid rent	\$1,400.00
October 2022 unpaid rent	\$1,400.00
November 1-4, 2022 unpaid rent	\$186.68.
<b>TOTAL</b>	<b>\$4,486.68</b>

The landlord is provided with this Order in the above terms and 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: November 04, 2022

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Residential Tenancy Branch