



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, CNL, LRE, LAT, OLC, FFT

### **Introduction**

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, to cancel a Two Month Notice to End Tenancy for Landlord's Use, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, for authority to change the locks, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on July 15, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in June of 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On July 22, 2022 the Tenant filed an Amendment to an Application for Dispute Resolution, in which the Tenant added an application to cancel a One Month Notice to End Tenancy for Cause that was served to him on July 14, 2022.

On October 06, 2022 the Tenant filed an Amendment to an Application for Dispute Resolution, in which the Tenant added an application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served to him on October 03, 2022 and to add a monetary claim for \$2,000.00 in compensation for actions that he alleges contributed to his sub-tenant moving out of the rental unit.

On November 01, 2022 the Tenant filed an Amendment to an Application for Dispute Resolution, in which the Tenant increased the amount of his monetary claim to \$4,000.00.

The Tenant stated that all of the aforementioned Amendments and associated evidence was sent to the Landlord, via registered mail, on November 01, 2022. The Landlord acknowledged receipt of these documents. As such, the evidence was accepted as evidence for these proceedings and the Application for Dispute Resolution has been amended accordingly.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter

There was insufficient time to hear submissions regarding the Tenant's application for a monetary Order for \$4,000.00.

The parties were advised that after considering the evidence that has been presented thus far, I would adjourn the hearing and reconvene it at a later date if I determined the monetary claim should be considered at these proceedings. The parties were advised that if I determined that the monetary hearing should not be considered at these proceedings, I would render a final written decision, without the need to reconvene the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Upon reflection, I find that the Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in this Application for Dispute Resolution is possession of the rental unit and I have, therefore, considered issues related to that matter, which include:

- The application to cancel a Two Month Notice to End Tenancy for Landlord's Use;
- The application to cancel two One Month Notice to End Tenancy for Cause;
- The application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- The application for an Order suspending or setting conditions on the Landlord's right to enter the unit;
- The application for an Order requiring the Landlord to comply with the Act and/or the tenancy agreement; and
- The application for authority to change the locks.

I find that the application for a monetary Order as compensation for loss the Tenant experienced because of his sub-tenant vacating the unit is not, in my view, sufficiently related to the continued possession of the rental unit. I therefore sever that claim, pursuant to rule 2.3 of the Residential Tenancy Branch Rules of Procedure, and I will not be considering it at these proceedings.

Although the Tenant explained that he withheld \$2,000.00 in rent in October and \$2,000.00 in rent from November of 2022 in an attempt to recover that loss, I did not need to determine the merits of that claim to determine whether the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should be set aside. As will be explained in my analysis, the Tenant did not have the right to unilaterally withhold that amount of rent without first obtaining authority from the Residential Tenancy Branch. Even if it is subsequently determined that the Tenant is entitled to compensation of \$4,000.00, he did not have the right to withhold rent money in October and November of 2022.

As I did not need to determine the merits of the Tenant's application for a monetary Order in order to determine the merits of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find the monetary claim should be determined at a different proceeding.

As I have severed the monetary claim from other issues in dispute at these proceedings, I find there is no need to adjourn the proceedings to address the monetary claim.

The Tenant retains the right to file another Application for Dispute Resolution seeking compensation for lost income that he alleges he experienced when his sub-tenant vacated the unit.

I note that the Tenant is currently withholding rent of \$4,000.00 in compensation for this alleged lost income. Unless the Landlord files an Application for Dispute Resolution seeking to recover that unpaid rent, this claim may be moot.

#### Issue(s) to be Decided

Should both of the One Month Notices to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Should the Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the Act, be set aside?

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 49 of the Act, be set aside?

Is there a need to issue an Order setting conditions on the Landlord's right to enter the rental unit?

Is there a need to issue an Order requiring the Landlord to respect the Tenant's right to quiet enjoyment of the rental unit?

Should the Tenant be granted authority to change the locks to the unit?

#### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2011;
- rent is due by the first day of each month;
- monthly rent is currently \$3,590.48;
- a One Month Notice to End Tenancy for Cause, dated June 22, 2022, was posted on the door of the rental unit on June 22, 2022;
- the One Month Notice to End Tenancy for Cause that was posted on June 22, 2022 declares that the rental unit must be vacated by July 31, 2022;
- the One Month Notice to End Tenancy for Cause that was posted on June 22, 2022 declares that the tenancy is ending because the tenant has allowed an unreasonable number of occupants in the unit;
- a Two Month Notice to End Tenancy for Landlord's Use, dated June 20, 2022, was posted on the door of the rental unit on June 20, 2022;

- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by August 31, 2022;
- the Two Month Notice to End Tenancy for Landlord's Use declares that the tenancy is ending because the rental unit will be occupied by the Landlord and/or the Landlord's spouse; and
- on June 16, 2022 a Residential Tenancy Branch Arbitrator set aside a Two Month Notice to End Tenancy for Landlord's Use, dated February 15, 2022, which was also served because the rental unit will be occupied by the Landlord and/or the Landlord's spouse;
- a One Month Notice to End Tenancy for Cause, dated July 14, 2022, was posted on the door of the rental unit on July 14, 2022;
- the One Month Notice to End Tenancy for Cause that was posted on July 14, 2022 declares that the rental unit must be vacated by August 31, 2022;
- the One Month Notice to End Tenancy for Cause that was posted on July 14, 2022 declares that the tenancy is ending because the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and has seriously jeopardized the health or safety or lawful right of another occupant;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 03, 2022 was posted on the door of the rental unit on October 03, 2022;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declares that the rental unit must be vacated by October 13, 2022;
- the Tenant only paid \$1,590.48 in rent for October of 2022, leaving a balance of \$2,000.00 still due; and
- the Tenant withheld \$2,000.00 from rent due for November of 2022, leaving a balance still due of \$4,000.00.

The Tenant stated that he withheld \$2,000.00 in rent for October of 2022 because the Landlord repeatedly told his sub-tenant that he must move out of the rental unit; the sub-tenant moved out of the rental unit as a result of the information provided by the Landlord; and, as a result, the Tenant experienced lost revenue of \$2,000.00.

The Tenant acknowledged that he "did not yet" have authority from the Residential Tenancy Branch to withhold \$2,000.00 in rent from his rent payment for October of 2022. He stated that he is seeking that authority at these proceedings, which is why he amended his Application for Dispute Resolution on October 06, 2022 to include a monetary claim for \$2,000.00.

In support of his application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the Tenant argued that there needs to be an acknowledgement of the loss he suffered as a result of the “campaign the Landlord launched against” him.

Both parties provided testimony regarding the Two Month Notice to End Tenancy for Landlord's Use and the two One Month Notices to End Tenancy for Cause. Most of that testimony is not being recorded here for reasons that will be explained in my analysis.

The one issue that was raised at the hearing that will be summarized here, is that the Landlord testified that when the One Month Notice to End Tenancy for Cause was served to the Tenant on June 22, 2022, the Tenant was the only person living in the unit. The Landlord was unable to explain why she served notice to end the tenancy on the basis that there were an unreasonable number of occupants in the unit when the Tenant was living alone in the unit.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant is required to pay rent of \$3,590.48 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant has not paid all of the rent that was due on October 01, 2022 and that rent of \$2,000.00 is still outstanding for that month.

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

I find that the Tenant has failed to establish that he had the legal right to withhold \$2,000.00 from his rent payment of October 01, 2022. Even if I, or another Residential Tenancy Branch Arbitrator, determines that the Tenant is entitled to compensation for lost revenue because his sub-tenant moved out, the Tenant did not have the right to withhold that amount from rent due to the Landlord on October 01, 2022. The Tenant would only have the right to withhold money from rent due after a Residential Tenancy Branch Arbitrator has ordered the Landlord to pay compensation to the Tenant. The Tenant simply does not have the right to arbitrarily withhold rent because he believes the Landlord owes money to him.

Section 46(1) of the *Act* stipulates 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. As the Tenant did not pay all of the rent when it was due on October 01, 2022, I find that the Landlord had the right, pursuant to section 46(1) of the *Act*, to serve the Tenants with the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was posted on the Tenant's door on October 03, 2022.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has not paid the overdue rent from October of 2022, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As I have concluded that the tenancy will end on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was posted on the Tenant's door on October 03, 2022, I find that I do not need to consider the application to cancel the Two Month Notice to End Tenancy for Landlord's Use or the two One Month Notices to End Tenancy for Cause. The effectiveness of those Notices to End Tenancy is irrelevant, given that the tenancy is ending pursuant to section 46(1) of the *Act*.

As the effectiveness of the Two Month Notice to End Tenancy for Landlord's Use or the two One Month Notices to End Tenancy for Cause is not relevant, the evidence related to those notices is not summarized in this decision.

As this tenancy is ending on November 30, 2022, I find that there is no need to provide the Tenant with authority to change the locks. The application for authority to change the locks is therefore dismissed, with leave to reapply.

As this tenancy is ending on November 30, 2022, I find that there is no need to set special conditions on the Landlord's right to enter the rental unit. The Landlord is, however, ordered to strictly comply with section 29 of the *Act* whenever the Landlord wishes to enter the unit during the remainder of the tenancy. For the benefit of both parties, section 29 of the *Act* reads as follows:

**29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i)the purpose for entering, which must be reasonable;
  - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d)the landlord has an order of the director authorizing the entry;
- (e)the tenant has abandoned the rental unit;
- (f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Similarly, the Tenant is reminded that he has an obligation to permit the Landlord to inspect the rental unit providing he is provided with notice of entry that complies with section 29 of the *Act*. In the event the Tenant is concerned about security during an inspection, the Tenant has the right to have a third party with him during any planned inspection.

Section 28 of the *Act* grants tenants the right to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.



I hereby order the Landlord to strictly comply with section 28 of the *Act* for the remainder of the tenancy.

I find that the Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing the Application for Dispute Resolution.

In concluding that the Application for Dispute Resolution has some merit, I was heavily influenced by the testimony that the Landlord served a One Month Notice to End Tenancy for Cause in which she declared the tenancy was ending because there were an unreasonable number of occupants in the unit, even though the Tenant was living alone in the unit at that time. Given the apparent unreasonableness of this One Month Notice to End Tenancy for Cause, I find it reasonable for the Tenant to file this Application for Dispute Resolution.

### Conclusion

The Landlord is granted an Order of Possession, pursuant to section 55(1) of the *Act*, on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was posted on the Tenant's door on October 03, 2022. This Order of Possession requires the Tenant to vacate the rental unit by November 30, 2022. This Order of Possession may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

As stated in my analysis, it is not necessary for me consider the application to cancel the Two Month Notice to End Tenancy for Landlord's Use or the two One Month Notices to End Tenancy for Cause because the tenancy is ending pursuant to section 46(1) of the *Act*.

The application for authority to change the locks is dismissed, without leave to reapply.

The application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit is dismissed, without leave to reapply.

The Landlord was ordered to strictly comply with section 28 of the *Act* for the remainder of the tenancy.

The Tenant has established a monetary claim of \$100.00 in compensation for the fee

paid to file this Application for Dispute Resolution and I grant the Tenant a monetary Order for \$100.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: November 15, 2022

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Residential Tenancy Branch