



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, RR, RP, LRE, FFT

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on June 15, 2022, in which the Tenants requested the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on June 7, 2022 (the "Notice");
- an Order that the Landlord:
  - make repairs to the rental unit; and,
  - be restricted from entering the rental unit;
- monetary compensation from the Landlord in the amount of \$9,900.00;
- an Order permitting the Tenants to reduce their monthly rent for services or facilities not provided; and,
- recovery of the filing fee

The hearing was conducted by teleconference at 11:00 a.m. on November 1, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the



*Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by Rule 1.1 which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

*Residential Tenancy Branch Rule of Procedure 2.3* provides 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.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenants' monetary claims; accordingly I exercise my discretion and dismiss the Tenants' monetary claim with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly those claims are dismissed without leave to reapply.

### Issues to be Decided

1. Are the Tenants entitled to an Order cancelling the Notice?
2. In the event the Notice is upheld, is the Landlord entitled to an Order of Possession and Monetary compensation based on the Notice?
3. Should the Tenants recover the filing fee?



### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution first/and is the Applicant, the Landlord presented their evidence first.

The Landlord testified that he purchased the rental unit March 1, 2022. At the time he purchased the property the Tenants were in occupation of the rental unit. Monthly rent was \$3,000.00 per month. The Tenants also paid a security deposit in the amount of \$1,500.00 to the previous owners which was transferred to the Landlord when the property was sold.

The Landlord stated that the Tenants had a previous rental agreement with the previous owners whereby they were to pay rent on the first of the month. When he purchased the property, he and the Tenants agreed the Tenants would pay rent twice a month; namely, \$1,500.00 on the 10<sup>th</sup> and \$1,500.00 the 22<sup>nd</sup> of each month.

The Landlord testified that despite this agreement, the Tenants did not pay rent as required on the first month of their tenancy with him, rather, they paid the following:

- \$500.00 on the 14<sup>th</sup>;
- \$500.00 on the 15<sup>th</sup>;
- \$500 on the 16<sup>th</sup>;
- \$400.00 on the 23<sup>rd</sup>;
- \$500.00 on the 28<sup>th</sup> and
- \$600.00 on March 30<sup>th</sup>.

He confirmed that while they paid the \$3,000.00 in rent for March, they did so in six different payments which was outside the bimonthly payment agreement. In support of this testimony, the Landlord provided his bank account statements to prove the payments. The Landlord also stated that he tried to contact the Tenants to discuss their payments and they refused to speak to him.



The Landlord stated that in April the Tenants did not pay anything on the 10<sup>th</sup>; rather, on the 21<sup>st</sup> of April the Tenants paid \$1,000.00 and a further \$1,000.00 on the 22<sup>nd</sup>. The Tenants failed to pay the balance of \$1,000.00 for the April rent.

The Landlord stated that in May, the Tenants paid \$1,500.00 in two payments of \$1,000.00 and then \$500.00 on May 26<sup>th</sup>. The Tenants then paid a further \$500.00 on May 27<sup>th</sup>. The Tenants failed to pay the balance of \$1,000.00.

The Landlord stated that the Tenants didn't pay any rent in June.

On June 7, 2022 the Landlord issued the Notice. The Tenants filed only the first page of the Notice in evidence before me. The Landlord gave testimony as to the contents of the second page, confirming it indicated the sum of \$3,000.00 was owing as of May 1, 2022. The Landlord also confirmed he served all three pages on the Tenants by posting to the rental unit door. He stated that he did not file a copy as he believed they had done so.

The Landlord testified that the Tenants paid \$500.00 on July 7<sup>th</sup> and failed to pay the balance of rent owing.

The Tenants failed to pay any rent in August, September, October and have yet to pay anything for November (although the hearing occurred on the 1<sup>st</sup>).

The Landlord stated that approximately 1 week before the hearing he received evidence from the Tenants indicating they had the septic tank emptied on February 21, 2022. He noted this was before he purchased the property.

In response to the Landlord's testimony the Tenant, D.S., testified as follows.

The Tenant confirmed that they moved into the rental unit in July of 2021. He further confirmed that monthly rent is \$3,000.00 per month and that they agreed to pay \$1,500.00 on the 10<sup>th</sup> and \$1,500.00 on the 22<sup>nd</sup> of each month.

The Tenant stated that they were not always on time and that he didn't have the payments in front of him such that he could not confirm when he paid the April rent.

The Tenant testified that they provided the Landlord \$1,000.00 by e-transfer on April 21<sup>st</sup> and \$1,000.00 on April 22<sup>nd</sup> and a further \$1,000.00 in cash on April 28<sup>th</sup>. He



stated that he was not provided a receipt. He also confirmed that he did not provide any proof of withdrawal of these funds.

In terms of May rent, the Tenant testified they did not pay the \$1,500.00 on May 10<sup>th</sup> as required. He stated they paid \$1,500.00 on May 24<sup>th</sup> in two payments of \$1,000.00 and \$500.00 and on May 27<sup>th</sup> they paid \$500.00. The Tenant confirmed they did not pay the balance of \$1,000.00 as he believed that they were supposed to be reimbursed for the septic services.

The Tenant then testified that they had a verbal agreement with the old Landlord that their rent was to go down to \$2,500.00 but the previous landlord sold the house "behind their back" and then one day the new Landlord arrived and told them to pay him rent.

In terms of the June rent payments, the Tenant stated that they paid \$1,500.00 in total in June including a \$500.00 in e-transfer on June 14<sup>th</sup> and two cash payments of \$500.00. He could not say when the cash payments were.

In terms of July, the Tenant stated that they paid three payments of \$500.00 cash to the Landlord. Again, he did not know the dates.

In terms of the August rent, the Tenant testified that they paid \$500.00 in August, although he does not know when the payment was made.

The Tenant confirmed they did not pay rent for September and October. He also confirmed that they have not paid November rent as it is not due until the 10<sup>th</sup> and 22<sup>nd</sup>.

The Tenant stated that they tried to negotiate with the Landlord in terms of all the amounts they believe they are entitled to, but the Landlord was unwilling.

In reply to the Tenant's testimony the Landlord stated that the Tenants did not provide him with any cash payments from April of 2022 to August 2022. The Landlord also denied any reduction in rent to \$2,500.00.



## Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find the Tenants were obligated to pay rent in the amount of \$3,000.00 per month payable in two equal payments of \$1,500.00 on the 10<sup>th</sup> and 22<sup>nd</sup> of each month. I find that the Tenants were not entitled to reduce their rent for the cost of emptying the septic system as that predated their tenancy with the Landlord. I also do not accept the Tenant's testimony that the previous landlord agreed to reduce their rent to \$2,500.00. Notably, during the hearing the Tenant confirmed rent was due in two equal payments on the 10<sup>th</sup> and 22<sup>nd</sup> in the amount of \$1,500.00 per payment and I find it simply not believable the Tenants would agree to pay this sum if they had a prior agreement to reduce the rent by \$500.00.

I further find the Tenants were in arrears of their rental payments at the time the Notice was issued.

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

### **Landlord's notice: non-payment of rent**

**46** (1)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.

(2)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)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.



(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

**Rules about payment and non-payment of rent**

**26** (1) 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.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent.



The Tenant claimed they paid their rent in May and June, in electronic transfers and cash payments; however, he was not able to confirm when those cash payments were made.

The Landlord testified that rent was not paid when required and issued the Notice. The Landlord denied received cash payments from the Tenants. The Landlord also submitted a ledger confirming all payments received.

Where the evidence of the Tenants and the Landlord conflict I prefer the evidence of the Landlord. I found the Landlord's testimony to be credible and consistent with his records. Conversely, I found the Tenant not to be credible. The Tenant was aware that their tenancy was in jeopardy for non payment of rent, yet was unable to provide any specific details as to alleged cash payments and failed to provide any supporting documentation of these cash payments. Similarly, the Tenant confirmed rent was due on a bimonthly schedule, yet failed to pay as agreed. The Tenant also confirmed they stopped paying rent in August of 2022. This failure to pay rent is consistent with the Landlord's testimony that they did not pay rent when due in May of 2022 or June of 2022.

On balance, I find the Tenants were in arrears of their rental payments in the amount of \$2,000.00 at the time the Notice was issued, and had no legal authority to withhold payment. I therefore dismiss the Tenants' request that I cancel the Notice.

Section 55 of the *Residential Tenancy Act* provides as follows:

**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.

Section 52 of the *Act* provides as follows.

**52** In order to be effective, a notice to end a tenancy must be in writing and must



- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the Notice and confirm it complies with section 52. While the Notice indicated the sum of \$3,000.00 was owing for rent as of the date of the Notice, I accept the Landlord's testimony that \$2,000.00 was in fact owing as of that date. I find that this discrepancy does not render the Notice invalid.

As I have dismissed the Tenants' Application to cancel the Notice, I grant the Landlord an Order of Possession effective **two days** after service upon the Tenant. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

The Landlord testified that \$16,500.00 was outstanding as of the date of the hearing; as the hearing occurred on November 1, 2022 and rent was not payable until the 10<sup>th</sup> and 22<sup>nd</sup> respectively, I award the Landlord compensation for rent owing until the date of the hearing in the amount of \$13,500.00 for the following:

MONTH	AMOUNT OWING
May 2022	\$1,000.00
June 2022	\$1,000.00
July 2022	\$2,500.00
August 2022	\$3,000.00
September 2022	\$3,000.00
October 2022	\$3,000.00
<b>TOTAL AWARDED</b>	<b>\$13,500.00</b>

This Monetary Order must also be served on the Tenants and may be enforced in the B.C. Provincial Court.



The Landlord is at liberty to reapply for further monetary compensation should the Landlord suffer any further losses related to this tenancy.

### Conclusion

The Tenants' request for an Order canceling the Notice is dismissed. The tenancy shall end in accordance with the Notice. Pursuant to section 55 of the *Act*, the Landlord is granted an Order of Possession and Monetary Order for the outstanding rent.

The Tenants' request for an Order that the Landlord make repairs to the rental unit; and, be restricted from entering the rental unit are dismissed without leave to reapply.

The Tenants' request for monetary compensation from the Landlord in the amount of \$9,900.00 is dismissed with leave to reapply.

The Tenants' request for an Order permitting the Tenants to reduce their monthly rent for services or facilities not provided is dismissed with leave to reapply.

The Tenants' request for recovery of the filing fee is dismissed without leave to reapply.

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 02, 2022

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Residential Tenancy Branch