



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, OLC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on September 23, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 21, 2022 (the 10 Day Notice);
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

### Procedural History

This hearing was reconvened after being adjourned on November 21, 2022. This decision should be read in conjunction with the Interim Decision issued on November 21, 2022.

The Interim Decision and notices of reconvened hearing were sent to each of the parties at the email addresses they provided to the Residential Tenancy Branch (RTB).

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed receipt of each other's respective Notice of Dispute Resolution Proceeding and evidence.

## Preliminary Matters

### *Adjournment request*

On November 21, 2022, at the beginning of the hearing, the tenant requested an adjournment. The tenant testified that the landlord had served their evidence on November 13, 2022, by giving a copy to the tenant's adult daughter. The tenant testified she had been hospitalized and returned home on November 17, but had not been able to review the landlord's evidence due to the affects of anesthesia.

The landlords objected to an adjournment, stating that their evidence consisted of communication between the parties, and that most of the documents submitted as evidence by the landlord had also been submitted as evidence by the tenant.

Rule 7.9 sets out the criteria for granting an adjournment, and Rule 3.15 states that the respondent's evidence must be received by the applicant and the RTB no later than 7 days before the hearing. I find the respondent met the timeline for responding to the tenant's application and that the tenant's evidence largely duplicates the landlord's evidence. Therefore, I declined the applicant's request to adjourn, finding it would prejudice the landlords.

Unrelated to the tenant's request, the first part of the hearing was later adjourned after 67 minutes to give the parties more time to be heard.

### *Dismissal of claims*

As the tenant confirmed that her claims for an order to reduce rent for repairs, services, or facilities agreed upon but not provided; and for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement were about the same issues as described in her claim to dispute the 10 Day Notice, I dismiss these two claims.

## Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Is the tenant entitled to the filing fee?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began on June 1, 2022, rent is \$4,750.00, due on the first of the month, and the tenant paid a security deposit of \$2,375.00, which the landlord still holds.

The tenant submitted that the rental unit was not in good condition when the tenancy began, and that as she owns a construction company, she reached an agreement with the landlords to make improvements to the unit in exchange for the June 2022 rent.

A copy of the tenancy agreement, including an addendum, is submitted as evidence. The addendum states that the tenant will complete the following in exchange for June 2022 rent:

- repaint the basement walls and fix the damaged areas from dog on both lower and main floor;
- pressure wash the back decks, clean up weeds and grass in the front and back yards, do year-round maintenance, and trim the hedge once; and
- change all the carpeting in the basement to hardwood or laminate

In the hearing, the landlord testified that they had an arrangement with the tenant in exchange for June rent, not for July and onward.

A copy of the 10 Day Notice was submitted as evidence. The parties agreed that the Notice was served on the tenant on September 21, 2022 in person.

The 10 Day Notice is signed and dated October 21, 2022 by the landlord, states an effective date of October 2, 2022, states the reason for ending the tenancy, and is in the approved form. The landlord testified that the date on the Notice was an error, and that the correct date for the Notice would have been September 21, 2022.

The 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent in the amount of \$10,250.00 due on September 1, 2022.

The landlord testified they came to the amount owing of \$10,250.00 as follows:

- \$750.00 for July 2022;

- \$4,750.00 for August 2022; and
- \$4,750.00 for September 2022.

The landlord testified that as of the hearing, the tenant owes rent as follows:

Month in 2022	Rent owing	Rent paid	Monthly outstanding
July	\$4,750.00	\$4,000.00	\$750.00
August	\$4,750.00	\$0.00	\$4,750.00
September	\$4,750.00	\$0.00	\$4,750.00
October	\$4,750.00	\$0.00	\$4,750.00
November	\$4,750.00	\$0.00	\$4,750.00
Total			\$19,750.00

The landlord testified they were also seeking to recover outstanding payment for utilities. There is no utilities owing amount noted on the 10 Day Notice, and there is no 30-day demand letter in evidence.

The tenant testified she had made rent payments as follows:

Month in 2022	Rent paid	Monthly outstanding
July	\$4,000.00	\$350.00
August	\$0.00	
September	\$0.00	
October	\$0.00	
November	\$0.00	

Regarding the July 2022 rent, the tenant testified that the landlord had been paid \$4,000.00, and that \$400.00 was to have been deducted for landscaping work done by the tenant, leaving \$350.00 owing. ( $4750 - 4000 - 400 = 350$ ) Submitted as evidence is a September 6 text from the landlord to the tenant, in which the landlord indicates the tenant owes \$4,750.00 in rent for July, less \$4,000.00 received in cash, less \$400.00 for landscaping. This comes to a balance of \$350.00 outstanding for the July rent.

The tenant testified she had not paid rent after July because the parties had not come to an agreement on rent deductions. The landlord submitted evidence that while engaged in communication with the tenant about non-emergency repairs to the unit and services

that the tenant will provide outside of the tenancy agreement, they continually asked the tenant to pay rent throughout July, August, and September.

### Analysis

Based on the testimony of the parties, I find the landlord served the 10 Day Notice on the tenant in accordance with section 88 of the Act and the tenant filed in time to dispute the Notice.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act, despite it being incorrectly dated October 21, rather than September 21, 2022 because both parties knew that the October date was incorrect and there is no dispute about when the tenant received the Notice.

I decline to consider whether there is an amount owing for utilities because there is no utilities owing amount noted on the 10 Day Notice, and there is no 30-day demand letter in evidence, as required by section 46(6) of the Act.

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The only reasons provided for in the Act to deduct all or a portion of the rent are:

- When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the Act);
- When section 33 of the Act in relation to emergency repairs applies;
- When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the Act);
- When the landlord issues the tenants a notice to end tenancy under section 49 of the Act for landlord's use of property (section 51 of the Act);
- When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the Act); and
- When the landlord consents to the tenants withholding rent.

This dispute is about whether the discussions between the parties about the tenant's repairs and improvements to the rental unit are tantamount to the landlord consenting to the tenant withholding rent. The tenant testified she withheld rent because she was

waiting for the landlord to come to an agreement with her about deducting rent. Based on the tenancy agreement addendum identifying only one month for which the tenant may withhold rent, and the tenant's admission that she didn't pay rent because she wanted the landlord to agree to deductions for the rent, I find the landlord did not consent to any rent being withheld after June 1, 2022.

I find that the tenant has not proven that at the time the Notice was issued on September 21, 2022, the landlord had consented to \$19,350.00 ( $350 + 4 \times 4750$ ) being withheld for July, August, September, October, and November rent. As a result, I dismiss the tenant's application to cancel the Notice and issue the landlord an order of possession.

As the tenant has not proven that there is an agreement enforceable under the Act for the landlord to pay the tenant for repairs, landscaping, appliances, et cetera, I decline to reduce the amount of unpaid rent owed under the tenancy agreement and find the landlord is entitled to \$19,350.00 in unpaid rent.

As the tenant is unsuccessful in her application, I decline to award the filing fee.

### Conclusion

The landlords are granted an order of possession, which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlords are entitled to \$19,350.00 in unpaid rent; the landlords are permitted to retain the full amount of the tenant's security deposit in partial satisfaction of the unpaid rent owing. I issue the landlords a monetary order for \$16,975.00. ( $19,350 - 2,375 = 16,975$ )

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: December 16, 2022

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Residential Tenancy Branch