



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes      CNR, CNC, CNL, RR, AAT, PSF, LRE, OLC, FFT  
OPR, OPC, OPL, MNRL, FFL

### Introduction

The tenant seeks various relief under the *Residential Tenancy Act* (the “Act”), including the seeking of orders cancelling three notices to end tenancy. By way of cross-application the landlord seeks an order of possession and a monetary order for unpaid rent. Both parties seek recovery of the application filing fee.

A hearing was held by teleconference on December 8, 2022 at 9:30 AM. In attendance were the tenant, her boyfriend, the landlord, and the landlord’s representative. No service of evidence issues arose and the parties who testified were affirmed.

### Preliminary Matter: Severing of Unrelated Issues

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

This rule, in addition to the efficient and expedited nature of dispute resolution proceedings before the Residential Tenancy Branch, necessitates that all relief sought by the tenant under the Act, with the exception of orders to end the notices to end tenancy, are dismissed *with* leave to reapply.

### Issues

1. Is the tenant entitled to an order cancelling any or all of the notices to end tenancy?
2. If not, is the landlord entitled to an order of possession on at least one of the notices to end tenancy?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is either party entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy, according to the written *Residential Tenancy Agreement*, began July 1, 2022. However, the tenant moved in early on June 24. Therefore, this is the date on which the tenancy began. Monthly rent is \$800 and there is a \$400 security deposit.

On July 17, 2022 the landlord issued a *One Month Notice to End Tenancy for Cause* (the “Cause Notice”). A copy of the Cause Notice was in evidence. The landlord gave testimony about various issues giving rise to the Cause Notice. These included the tenant having too many guests, having noisy and disrespectful guests, a noisy truck late at night, a two-foot-high BBQ flame putting the house in danger, and, issues with the tenant’s guests bringing large German shepherds into the property.

On August 12, 2022 the landlord issued *10 Day Notice to End Tenancy for Unpaid Rent* (the “10 Day Notice”). A copy of the 10 Day Notice was in evidence. The landlord testified that there remained unpaid rent in the amount of \$200.00 for the one week that the tenant moved in early. He said that she moved in without his permission.

It should be noted that the landlord gave a written demand letter, dated July 16, 2022 to the tenant. In this letter he (or rather, his mother, who is an unnamed landlord on the tenancy) notes that the tenant moved in early on June 24. He then writes, in part:

I AM ASKING FOR A \$200.00 PAYMENT FOR THAT WEEK JUNE 24<sup>TH</sup>, 2022 TO JUNE 30<sup>TH</sup>, 2022 [...] OR PAY THE @200.00 WHICH WILL BE DUE JULY 24, 2022 PLUS THE \$800.00 AUG. 01, 2022 [...] SO I’LL TELL YOU AGAIN, \$200.00 PAID RIGHT NOW FOR THAT EXTRA WEEK [...] BUT IF YOU DON.T PAY THE \$200.00 AND YOU ONLY PAY THE \$800.00 YOU HAVE TO BE OUT AUGUST 23, 2022. [...]

On October 7, 2022 the landlord issued a *Two Month Notice to End Tenancy for Landlord’s Use of Property* (the “Use Notice”). He and his representative testified that the intention is to have the landlord’s son move into the property. They explained that the son had open heart surgery and that he will not be travelling overseas (he was previously in Japan). The rental unit—which is a detached structure—was “originally built for him,” the representative remarked.

The tenant testified that, with regard to the Rent Notice, she was in fact allowed to move in early. The landlord knew that she was moving in early. He told her that she was free to use the pool and the BBQ. The tenant explained that it was not until later on that the landlord issued the 10 Day Notice, despite the tenant making several attempts to address the issue of the \$200.00.

Regarding the Use Notice, the tenant testified that the landlord never previously (before issuing the Use Notice) mentioned anything about his son moving into the rental unit. She questioned why the landlord would rent the property to her if it was his intention to have his son occupy the rental unit.

Regarding the Cause Notice the tenant testified that she has never come home late making noise. She turns down the music in her vehicle when she arrives home. She stressed that she has never had any disrespectful guests. And she remarked that she has never had an excessive number of guests. The tenant testified that she has “never, ever, ever been unruly or disrespectful or loud.”

And while there was a large flame in the BBQ caused by chicken accidentally catching fire the house was never in danger. There was no threat, she added.

According to the tenant the landlord has called her “a little whore” who is using the rental unit as a place to conduct escort or call girl services. She denies all of these allegations and says that she gets up early, goes to the gym, goes hunting, and works. The landlord denied that he ever called her these names or said such things.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. When a tenant disputes a notice to end the tenancy the onus shifts to the landlord to prove the ground for issuing the notice to end tenancy.

*The 10 Day Notice to End Tenancy for Unpaid Rent* shall be dealt with first.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month.

While the \$200.00 being sought is for rent incurred before the tenancy “officially” began, the landlord is entitled to this amount. As per section 1 of the Act, “rent” means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit. The landlord issued a demand letter on July 16 requesting the immediate payment of the \$200.00 rent. While the demand letter is convoluted and at times confusingly repetitious, it could not have been clearer in respect of the rent that was owing. The tenant disputed the 10 Day Notice and has not paid the \$200.00.

On a balance of probabilities, it is my finding that the 10 Day Notice was issued on a valid ground pursuant to section 46(1) of the Act. Further, having reviewed the 10 Day Notice it is my finding that it complies with section 52 of the Act in form and content.

Taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the 10 Day Notice be upheld and that the tenant’s application to cancel the 10 Day Notice be dismissed without leave to reapply.

Section 55(1) of the Act states 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

- (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.

Having found that the 10 Day Notice complies with section 52 of the Act, having dismissed the tenant’s application to cancel the Notice, and having upheld the Notice, the landlord is granted an order of possession of the rental unit.

Given the time of year, and considering the difficult housing market, I find it appropriate to deviate from the usual two-day effective date normally affixed to orders of possession. Therefore, pursuant to section 55(3) of the Act the order of possession shall take effect on December 31, 2022 at 1:00 PM.

A copy of the order of possession is issued with this Decision to the landlord. The landlord must serve a copy of the order of possession on the tenant and the tenant must vacate the rental unit no later than the above-noted time and date.

Pursuant to sections 26, 67, and 72 of the Act the landlord is entitled to compensation in the amount of \$200.00 for the unpaid rent and \$100.00 for the application filing fee.

Pursuant to section 38(4)(b) of the Act the landlord is ordered to retain \$300.00 of the security deposit in full satisfaction of these two awards. The remainder \$100.00 of the security deposit must be dealt with in accordance with section 38 of the Act.

Having upheld the 10 Day Notice it is unnecessary for me to consider the merits or the facts regarding either the Cause Notice or the Use Notice. Those two notices to end tenancy are therefore cancelled, as they are now moot.

#### Conclusion

**The tenant's application is hereby dismissed.**

**The landlord's application is hereby granted, and the landlord is granted an order of possession. The tenancy shall end on December 31, 2022 at 1:00 PM.**

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: December 9, 2022

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Residential Tenancy Branch