



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-DR, FFL**

**CNR, DRI-ARI-C, PSF, LRE, OLC, FFT**

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On July 21, 2022, an Adjudicator appointed pursuant to the Residential Tenancy Act (the Act) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an ex parte hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

*I have reviewed all documentary evidence and I find the tenancy agreement does not appear to provide the last names of the tenants.*

*I also note that Policy Guideline #11 on Amendment and Withdrawal of a Notice to End Tenancy provides the following information:*

*"A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant... Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant."*

*I find the tenancy agreement was signed on May 28, 2022, after the 10 Day Notice was issued on April 3, 2022.*

*I find it is not clear whether the tenants were aware of the landlords' intention not to continue the tenancy upon signing the tenancy agreement.*

*I find that that these issues can only be addressed through a participatory hearing.*

This reconvened hearing dealt with applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act*.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- A dispute to an additional rent increase for capital expenditures pursuant to section 23 of the Residential Tenancy Regulations;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both landlords and both tenants attended the hearing. The landlords were assisted in having the hearing translated to their native language by their friend, KS. As all parties were in attendance, service of documents was confirmed. Each party acknowledged service of the other's Notice of Dispute Resolution Proceedings package and both stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

If cancelled, is the tenant entitled to the orders sought against the landlord?

Can either party recover the filing fee from the other?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is the lower unit in the landlord's residence and that the landlords occupy the upper unit.

The landlord gave the following testimony. They met the tenants through a mutual friend at their temple. Because the tenants were referred to them, the parties did not sign a written tenancy agreement when the tenancy began on April 1, 2019. The surname of the tenants is the same as theirs, however the tenants do not go by their surname, as is their custom from their original place of birth. Rent was set at \$1,300.00, payable on the first day of each month.

The tenants began to pay their rent irregularly during 2021. The landlords served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on January 30, 2022, but that one was never acted upon by the landlords.

The landlord DD testified that he personally served the tenant PS with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 3, 2022, and the landlord GD testified that she witnessed DD serve the notice. Another person, AB witnessed the service and signed a form RTB-34 indicating the same. The proof of service document was filed as evidence by the landlord. The notice states the tenant failed to pay a total of \$2,900.00 in rent that was due on April 1, 2022. The landlord testified that the tenant did not pay the outstanding arrears or file an application to dispute the notice within 5 days of being served with it.

In early February 2022, the landlord doesn't remember exactly when, he needed to acquire financing to purchase a new truck and in order to qualify, he needed to show the loan officer that he has had rental income from the lower unit of the house. At this time, the landlord gave the tenancy agreement (provided as evidence for this hearing) to the tenants to sign. Although it was given to them in February, the tenants didn't sign and return it to the landlords until May 28, 2022, and this is the date shown on the tenancy agreement. The landlord GD signed it on May 28<sup>th</sup> as well, although signing the tenancy agreement on May 28<sup>th</sup> (after serving the April 3 notice to end tenancy) was not meant to reinstate the tenancy.

The landlords testified that they also served another 10 Day Notice to End Tenancy for Unpaid Rent/Utilities upon the tenants on May 28, 2022 however that notice is not before me and the tenant did not file an application to dispute it.

The landlord provided a direct request worksheet and another handmade spreadsheet for me to determine what the tenant owed. According to the landlord, as of November 1, 2022, the tenants are in arrears in rent of \$7,200.00. The landlord provided receipts for payments made in cash. In evidence are receipts for the June 13<sup>th</sup>, July 19<sup>th</sup>, and September 7<sup>th</sup> payments. Prior to this, the tenants refused receipts, even though they were offered by the landlord.

The tenant PS gave the following testimony. He agrees with the landlord in that his surname is the same as the landlord's but he does not go by that surname. The names as they appears in the application for dispute resolution, the tenancy agreement and the notice to end tenancy are accurate.

He acknowledges receiving the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 3, 2022. When I pointed out he was required to either pay the outstanding arrears or file an application to dispute the notice within 5 days of being served with served with it, the tenant changed his testimony and denied being served with it on that day or any other.

The tenant then testified that the landlord served him with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on July 5, 2022 and that he received it via registered mail on that date. When I pointed out that he filed his application to dispute that notice seven days later, on July 12<sup>th</sup>, the tenant stated he needed to review his records saying perhaps he received it on July 6<sup>th</sup>.

The tenant testified that the landlord never gave him receipts for rent, always made in cash, and that he is fully up to date in paying rent. The tenant argues that the reason the landlord is trying to end the tenancy is because the landlords are upset because the tenant called the police on them for entering the suite while their daughter was taking a shower. I advised the parties that my decision would be based on the issue of non-payment of rent only.

The landlord gave rebuttal testimony indicating that he sought payment by cheque, as evidenced by the text messages supplied. The landlords never served a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities in July, just the first one in January, the one in dispute on April 3<sup>rd</sup>, and another one on May 28<sup>th</sup>.

### Analysis

I find that the parties named as tenants are correctly named in the application for dispute resolution.

I find that the explanation for the signing date of the tenancy agreement subsequent to the service of the April 3<sup>rd</sup> notice to end tenancy is legitimate in that it was given to the tenants to sign long before the notice to end tenancy was served. I accept that the purpose of obtaining the signed tenancy agreement was to establish the landlord's credit-worthiness, not to re-establish the tenancy. Consequently, I find that the tenancy agreement signed on May 28, 2022 did not re-establish a tenancy between the parties and the landlord has not waived their right to seek an Order of Possession based on the April 3<sup>rd</sup> notice to end tenancy.

I found the tenant's testimony regarding being personally served with the April 3, 2022 notice to end tenancy lacks credibility. When the consequences of not filing an application to dispute the notice to end tenancy was pointed out to the tenant, the tenant gave conflicting testimony to refute his earlier testimony. Based on testimony of the landlord, and the signed, witnessed proof of service document filed by the landlord, I am satisfied that the tenants were personally served with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 3, 2022 in accordance with sections 88 and 90 of the Act.

Pursuant to section 55(2)(b) of the Act, a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Pursuant to section 55(4), In the circumstances described above, the director may, without any further dispute resolution process under Part 5, grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

The tenants did not file an application to dispute the April 3<sup>rd</sup> notice to end tenancy or pay the arrears in rent as shown in the notice by April 8, 2022, within 5 days of being served with it. Consequently, the landlord is granted an Order of Possession in accordance with section 55(4).

I have reviewed the landlord's direct request spreadsheet and the handwritten spreadsheet and I concur with the amounts shown. I accept the landlord's evidence that the tenants were in arrears of rent for the February rent of \$300.00. I accept that the tenants made payments on June 13 (\$1,300.00), July 19 (\$1,200.00), September 7 (\$1,300.00) and another unknown date in October (\$1,000.00). No other payments were made. I find the tenants are in arrears in rent in the amount of \$7,200.00, calculated as follows:

Month and date rent was due	Rent amount owing	Amount of partial payment(s) received	Date of partial payment(s)	Balance rent owed
example <i>Jan. 1, 2015</i>	example <i>\$900</i>	example <i>\$300</i>	example <i>Jan. 1, 201 5</i>	example <i>\$600</i>
Feb 1	\$1300	\$1000		\$300
Mar 1	\$1300	0	0	\$1600
April 1	\$1300	0	0	\$2900
May 1	\$1300	0	0	\$4200
June 1	\$1300	0	0	\$5500
		\$1300	June 13	\$4200
July 1	1300	0	0	\$5500
		1200	July 19	\$4300

Aug 1	1300	0	0	\$5600
Sep 1	1300	0	0	\$6900
		1300	Sep 7	\$5600
Oct 1	1300	0	0	\$6900
		1000	October (unknown)	\$5900
Nov 1	1300	0	0	\$7200

Pursuant to section 55(4), the landlord is awarded compensation for unpaid rent in the amount of \$7,200.00.

As the landlord's application was successful, the filing fee will be recovered.

The tenant's application is dismissed without leave to reapply.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of \$7,300.00.

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 01, 2022

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Residential Tenancy Branch