



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: **MNRT, MNDCT, AAT, PSF, LAT, AS, OLC  
CNR, CNC**

Landlord: **OPU-DR, FFL**

### **Introduction**

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

The tenant P.M. applied for:

- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33;
- A monetary order for damages or compensation pursuant section 67;
- An order allowing the tenant access to the rental unit pursuant to section 30;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- Authorization to change the locks to the rental unit pursuant to section 31;
- Authorization to assign or sublet when the landlord's permission has been unreasonably withheld pursuant to section 65;
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55.

The landlord applied for:

- An order of possession following the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities that was not disputed, pursuant to section 55;
- Authorization to recover the filing fee from the other party pursuant to section 72.

All 3 tenants attended the hearing, and the landlord was represented by its agent, property manager VN (the "landlord"). 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.

The 3 tenants each acknowledged being served with the landlord's Notice of Dispute Resolution Proceedings package. The landlord acknowledged service of the tenant P.M.'s Notice of Dispute Resolution Proceedings packages. All were prepared to have the merits of the applications heard.

#### Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states 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. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notices to end tenancy was the primary issue before me and that the other issues listed on the tenant's applications were not related and would be dismissed with leave to reapply.

In their respective applications for dispute resolution, both the tenant and the landlord named parties not shown on the tenancy agreement as respondents or applicants. I have removed these parties in accordance with section 64 of the Residential Tenancy Act and rule 4.2 of the Rules of Procedure.

#### Issue(s) to be Decided

Should the landlord's notice to end tenancy for unpaid rent be upheld or cancelled?

Should the landlord's notice to end tenancy for cause be upheld or cancelled?

Can the landlord recover the filing fee?

#### 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 landlord gave the following testimony. The tenancy with one of the tenants P.M. began in 2018. In 2022, the landlord signed a new tenancy agreement with P.M. and the other 2 tenants named in this application, effective September 1, 2022. Each of the tenants signed the tenancy agreement with the landlord on September 2, 2022 with rent set at \$1,800.00 per month payable on the first day of each month. The landlord testified that the parties verbally agreed the utilities would be \$40.00 per month, although the tenancy agreement only indicates "tenant pays 50% of gas bill".

As of August 24, 2022, there was a previous balance owing from the previous tenancy of \$390.00. As of September 1<sup>st</sup>, with rent and utilities, the balance was \$2,230.00. Four payments came in throughout September, (\$540.00 + \$200.00 + \$800.00 + \$300.00 = \$1,840.00). Rent and utilities for October, plus the arrears from the previous tenancy meant the tenants were once again in arrears of \$2,230.00 by October 1<sup>st</sup>. On October 16<sup>th</sup>, the landlord personally served the tenants Z.H. and B.H. with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. The tenant P.M. was emailed a copy of it on October 17<sup>th</sup>. Together with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, a 1 Month Notice to End Tenancy for Cause was also served to each of the tenants.

A copy of the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities dated October 14, 2022 was provided as evidence. It shows the tenants failed to pay rent of \$2,300.00 due on October 1, 2022 and utilities of \$80.00 following written demand on October 1, 2022.

The landlord testified that he has not received any rent from the tenants since the last payment of \$300.00 on September 26, 2022. The tenants did not pay the arrears for October as shown as outstanding on the notice to end tenancy, and did not pay rent for November, December, or January. The landlord seeks to be compensated for the additional months rent.

The tenant B.H. testified that he vacated the rental unit and went to Alberta to work after being served with the notices to end tenancy.

The tenant Z.H. testified that he is currently staying at his aunt's residence and would like to move back in if the tenant P.M. is gone. He also acknowledged service of the notices to end tenancy and vacated the rental unit before the effective date stated on the notice.

The tenant P.M. gave the following testimony. He has been living in the rental unit since 2018. He acknowledged service of the notices to end tenancy and disputed them on October 19, 2022. P.M. testified that after signing the tenancy agreement with the landlord on September 2<sup>nd</sup>, the landlord and the 2 co-tenants met and tried to come up with a co-roommate written agreement. Rent was to be collected by P.M. and sent to the landlord, but the co-tenants had stopped paying him. P.M. had no choice but to evict them himself and provided copies of letters to that effect.

P.M. testified that rent for the month of October was paid via e-transfer to the landlord's assistant, "N". It was paid late but was fully paid by October 22 or October 23. The tenant recalls it was a single payment, not multiple small payments. P.M. also testified that rent for November, December, and January's rent was also paid by e-transfer.

### Analysis

The tenants Z.H. and B.H. were duly served with the notice to end tenancy on October 16, 2022. Neither of them disputed the notice and vacated the rental unit in accordance with it. Each of them is conclusively presumed to have accepted the tenancy ended on the effective date of the notice, October 25, 2022.

Once served with a notice to end tenancy for unpaid rent, section 46(4) requires that the tenant(s) pay the overdue rent or dispute the notice by making an application for dispute resolution. The tenant P.M. is deemed served with the notice to end tenancy on October 17, 2022 and filed an application to dispute the notice within the required 5 days, on October 19, 2022 in accordance with section 46 of the *Act*.

The tenant P.M. testified that he fully paid October's rent via e-transfer on either October 22<sup>nd</sup> or 23<sup>rd</sup>. Although he filed an application to dispute the landlord's notice and had the opportunity to supply documentary evidence to corroborate his testimony, he didn't do so. P.M. also testified that he paid November, December and January's rent via e-transfer and likewise didn't provide any documentary evidence to substantiate this testimony. If such records existed I question why the tenant wouldn't make the

effort to supply them for this hearing. Consequently, I find the tenant's testimony regarding payment of rent lacks credibility. Based on the fact that the landlord recorded each and every partial payment made by the tenant P.M. since the beginning of January, 2022, some as little as payments of \$130.00, on a balance of probabilities, I find that P.M. did not pay rent to the landlord for the month of October or for any month thereafter.

I find the landlord has provided sufficient evidence to satisfy me the notice to end tenancy for unpaid rent should be upheld and I order that it be upheld.

Section 55(1) 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. I have reviewed the landlord's notice to end tenancy and I find it complies with the form and content provisions of section 52. As the effective date on the notice has passed, I grant the landlord an Order of Possession effective 2 days after service upon the tenants.

Section 55(1.1) states that 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. The parties agree that rent was set at \$1,800.00 per month and that the first month's rent (September) was fully paid by September 26<sup>th</sup>. I find that only rent for October, 2022, in the amount of \$1,800.00 was due as of October 1, 2022 and I grant the landlord a monetary order against all 3 tenants for that amount. The landlord has not provided sufficient evidence to satisfy me the parties had any agreement to pay \$40.00 per month in utilities and I decline to grant it.

I find the additional arrears in rent of \$390.00 was accumulated solely by the tenant P.M. prior to the commencement of the tenancy with all 3 tenants on September 1, 2022. Consequently, the other 2 tenants are not responsible for paying it. I decline to grant the landlord this amount.

As the tenancy with Z.H and B.H. ended when they vacated the rental unit, they are not responsible for rent for the period of time the tenant P.M. continued to occupy the rental unit after the effective date stated on the notice to end tenancy. Should the landlord

seek compensation from P.M. for November, December and January, the landlord must file a separate application for dispute resolution seeking monetary compensation against P.M. alone.

The landlord was successful in his application and the landlord's \$100.00 filing fee will be recovered.

As the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities was upheld and the tenancy is ending in accordance with that notice, I will not make a ruling as to the merits of the landlord's 1 Month Notice to End Tenancy for Cause.

### Conclusion

I grant an Order of Possession to the landlord effective 2 days after service on the tenants. 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 \$1,900.00.

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: January 12, 2023

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Residential Tenancy Branch