



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## FINAL DECISION

**Dispute Codes** CNR, MNDCT (Tenant)  
OPU-DR, MNU-DR (Landlord)

### Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The words Tenant and Landlord in this decision have the same meaning as in the *Act* and these words utilizing the singular shall also include the plural and vice versa where the context requires.

The Landlord applied for:

- an order of possession for non-payment of rent pursuant to section 55; and
- a monetary order for unpaid rent in the amount of \$31,934.00 pursuant to section 67.

The Tenant applied for:

- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$11.00 pursuant to section 33; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;

This matter was reconvened from a prior adjourned hearing on December 19, 2022. I issued an Interim Decision setting out the reasons for the adjournment on December 19, 2022 (the “**Interim Decision**”).

At both hearings, the Tenant, CJ, attended the hearing. SRW attended neither hearing. The Tenant called into the conference call at 13:33 p.m. At both hearings, the Landlord was represented by MV, Legal Counsel (“**Counsel**”); RJ (Landlord’s Agent); and MS (sub-agent to the Landlord’s Agent). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* [the “**Rules**”] prohibit persons from recording dispute resolution hearings.

Neither party raised concerns regarding the service for Dispute Resolution Proceedings or the documentary evidence. Other than the initial application filed, the Tenant provided no further documentary evidence to the Residential Tenancy Branch (the “**RTB**”) or the Landlord.

The Tenant confirmed he received the Landlord’s evidence. The Landlord’s Canada Post Tracking Numbers are reproduced on the cover of this decision. CJ testified that SRW is not a party to the dispute, the dispute was between CJ and the Landlord’. CJ further testified that the Landlord was harassing SRW by including her name on the various Notices and on the Application for Dispute Resolution. Based on the testimony of the parties, I find the parties were served in accordance with Sections 89 of the *Act*.

**Preliminary Issue #1: Naming of Parties**

*Residential Tenancy Policy Guideline 13* (the “**Guideline**”) provides guidance with respect to the rights and responsibilities of co-tenants. It states the following which is relevant to this dispute.

**B. TENANTS AND CO-TENANTS**

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. **“Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.**

**C. PAYMENT OF RENT**

Co-tenants are jointly and severally responsible for payment of rent when it is due.

Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of the rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

*Guideline 13* is clear that co-tenants are jointly and severally responsible for the obligations that arise out of the tenancy. Both CJ and SRW are listed as tenants under the tenancy agreement. Neither SRW nor CJ gave notice to the Landlord that SRW would be vacating the rental unit *permanently*. Neither Tenant asked the Landlord to remove SRW from the tenancy agreement. There was no separate tenancy agreement between the Landlord and CJ. Even if SRW vacated the rental unit at the end of March or beginning of April, she cannot avoid her obligations under the contract unless the parties to the agreement alter its terms, either expressly or through conduct. I find that did not occur here.

I find CJ and SRW are co-tenants to the tenancy agreement and are jointly and severally liable for any compensation owing to the Landlord following the end of the tenancy.

**Preliminary Issue #2: Adjournment**

At the commencement of the hearing, the Tenant asked for an adjournment stating that he was still in the process of gathering evidence regarding the condition of the rental unit including information from the municipal bylaw department, building code infractions, the RCMP, witnesses etc. He stated he plans to hire legal counsel to sue the Landlord in Supreme Court for improvements undertaken on the residential property that remain unpaid.

Counsel opposed an adjournment. He argued this was simply another delay tactic on the part of the

Tenant pointing out at the initial hearing, adjourned to provide the Tenant the opportunity to retrieve and review the Landlord's evidence, the Tenant stated that he was vacating the rental unit on December 31, 2022 and "all issues will be resolved" so there was no point to continuing the hearing. It is now January 3, 2023 and the Tenant remains in the rental unit and states he will vacate the rental unit on January 31, 2023 and "all matters will be resolved". Counsel stated the Landlord has not received rent for 10+ months. Another delay negatively impacts the Landlord.

Rule 7.8 of the *Rules* allow parties to request that hearings be adjourned.

Rule 7.9 of the *Rules* states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment.

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party.

This is a cross application. The Tenant filed for dispute resolution on July 27, 2022; the Landlord on August 31, 2022. The original hearing on December 19, 2022 was adjourned to provide the Tenant the opportunity to review and respond to the Landlord's evidence since he alleged, he was working out of town and did not receive the package. At the December 19, 2022 hearing, the Tenant testified that the Landlord never provided him with a key to the mailbox so he was unable to retrieve any mail from the mailbox.

In my Interim Decision dated December 19, 2022, I ordered the parties to exchange evidence prior to the hearing scheduled for January 3, 2023 to ensure the Tenant had access to the evidence. Email addresses were confirmed and an email exchange of evidence agreed to.

At the January 3, 2023 hearing, the Tenant confirmed that he received the Landlord's evidence in the mailbox when he return on December 21, 2022. Counsel pointed out that the Tenant previously testified he had no access to the mailbox alleging the Landlord did not provide him with keys. The Tenant did not respond but did state the tenancy will end on January 31, 2023 and this would "resolve the issues." The Tenant confirmed he did not comply with my order to exchange evidence stating he "did not have time over the holidays".

In considering the Tenant's request, I weighted the testimony of both parties. The Tenant presented three (3) explanations for why he requested an adjournment. First, he was too busy over the holidays to have time to prepare, second, he was still gathering evidence, and third, he planned to engage legal counsel to sue the Landlord in Supreme Court and that is when all documents would be provided to the Landlord. The Tenant alleges he is owed money for repairs to the residential property he undertook but did not receive payment for.

I find an adjournment of this case would not assist the parties in resolving the issues. I find the request for an adjournment resulted from the failure of the Tenant to prepare for the hearing and granting a second adjournment would prejudice the Landlord.

The Tenant was the first party to apply to the Residential Tenancy Branch (the “RTB”) for dispute resolution and did so on July 27, 2022 some six (6) months prior to this hearing. The Tenant’s request for an adjournment was to gather more evidence of the Landlord’s past bylaw infractions, RCMP files, call witnesses, and sort through past emails, all of which were available prior to the January 3, 2023 hearing. The Tenant had ample time and a fair opportunity to prepare for the hearing, which included obtaining legal counsel.

Accordingly, I deny the request for an adjournment. The reconvened hearing proceeded on the primary issue of whether the tenancy would continue and lasted 60 minutes.

### **Preliminary Issue #3: Severing**

The Tenant applied for monetary relief for work completed on and to the residential property, but not paid for by the Landlord. The Tenant stated that he was about to hire legal counsel and sue the Landlord for not paying him for work performed on the residential property.

If the Tenant intends to sue the Landlord for non-payment of work performed, this is outside the scope of my jurisdiction.

Pursuant to Rule 2.3 of the *Rules*, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

I find that the primary issue is whether the tenancy will continue or end pursuant to the 10 Day Notices issued. I explained severing to the parties. Accordingly, pursuant to Rule 2.3 of the *Rules*, I dismiss the Tenant claim for a monetary award for unpaid repairs, with leave to reapply.

The hearing proceeded on the issue tied to the notices to end tenancy as detailed above.

### **Issues to be Decided**

Is the Tenant entitled to:

- 1) an order cancelling the Notices?

Is the Landlord entitled to:

- 1) an order of possession; and
- 2) a monetary order for \$31,934.00?

### **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 entered into a written fixed term tenancy agreement for the upper rental unit of a residential property starting February 1, 2022 concluding January 31, 2023. Monthly rent is \$2600.00, payable on the first of each month. The Tenants were responsible for 70% of the utilities. The tenancy agreement also included a \$25.00 daily penalty for rental arrears. The Tenants did not pay the Landlord a security deposit. The security deposit was waived in exchange for the Tenants supplying the rental unit with a washer/dryer.

The Landlord testified that five (5) notices were issued to the Tenant as charted below::

Notice Date	Notice	Sent By
June 1, 2022	10-Day Notice Unpaid Rent	email
June 7, 2022	10-Day Notice Unpaid Rent	email
July 15, 2022	10-Day Notice Unpaid Rent	Canada Post Registered Mail
August 18, 2022	10-Day Notice Unpaid Rent	email
December 5, 2022	One Month Notice for Cause	email
December 6, 2022	One Month Notice for Cause	Registered Mail

Counsel stated that the SRW paid February and March rent but the March rent had a shortfall of \$125.00. Since April 1, 2022 the Tenants have paid no rent.

Counsel provided evidence of ongoing communication with CJ by text and email to the email addresses used to send the 10 Day Notices. Counsel also provided evidence of electronic communication between the Landlord and SRW. Counsel referred to Schedule 1, "Timeline of Events" that included various screenshots of the ongoing communication between the parties.

CJ sent the Landlord an email/text offering to do various repairs including renovating the basement suite, widening the driveway, and repairing fencing. Counsel stated these repairs, if in fact undertaken, were unauthorized by the Landlord. There was no agreement between the parties about any renovations, repairs, or property improvement. Repairs were undertaken on the Tenant's own initiative not at the request of the Landlord. The Landlord never agreed to waive rent in lieu of repairs and property improvements. To confirm this point Counsel directed attention to multiple text messages the Landlord sent to the Tenants requesting rent payments. These email and text messages also confirm that CJ refused to pay rent stating he was withholding rent until he was paid for the renovations, repairs, and yard work.

Counsel disputes the Tenant's testimony that the rental unit required repairs and renovation. Counsel submitted a text message exchange dated January 24, 2022 between SRW and the Landlord that read: "I absolutely love the house and think it would be a perfect fit for our family." When SRW and CJ moved in, the lower-level unit was tenanted.

Counsel stated that RJ, on behalf of the Landlord, repeatedly asked the Tenant to submit invoices for the alleged work done and supplies as the Landlord was willing to reimburse the Tenant accordingly. The Tenant failed to comply with the requests for invoices but rather sent a series of random text messages stating he had completed various repairs and improvements to the residential property. Counsel further pointed out that most of the alleged work was in the basement and on the property, not in the upper

rental unit. Further, the Tenant refused the Landlord's Agent, RJ, access to both the upper and lower rental units to inspect the repairs.

Counsel disputes the Tenant's testimony that he had no access to the mailbox because the Landlord did not provide a key. Counsel referenced photos that showed the keys provided to the Tenants at the start of the Tenancy and also pointed out by the Tenant's own admission, he retrieved the Canada Post Evidence package delivered to the locked mailbox.

As the Tenants failed to pay rent for several months despite messages sent requesting payment, the Landlord started issuing 10 Day Notices in both Tenants names.

The Landlord submitted a monetary order claim in the amount of \$31,934.00, reproduced below:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	MV (Legal Counsel) as per agreement	Rent: Apr 1 - Nov 30 2022	\$20,800.00
#2	MV (Legal Counsel) as per agreement	Rent: Dec 2022	\$2,600.00
#3	MV (Legal Counsel) as per agreement	utilities: feb 1 - Jun 15 2022	\$1,659.51
#4	MV (Legal Counsel) as per agreement	Penalty: Apr 1-Nov 30 2022	\$6,100.00
#5	MV (Legal Counsel) as per agreement	Penalty Dec 1-Dec 31 2022	\$775.00
#6	MV (Legal Counsel) as per agreement	Per day rent @\$85.48	\$
#7			\$
#8			\$
#9			\$
#10			\$
Total monetary order claim			\$31,934.00

The Tenant was very angry throughout the hearing, about nonpayment for labour and materials and that his wife is named jointly in this dispute. He repeated multiple times that the dispute is between him and the Landlord and to 'leave SRW out of it' and stop sending her texts and emails with Notices and harassing her and his family.

The Tenant testified that when he and SRW moved into the rental unit there were three (3) Tenants including a homeless person living in the lower-level rental unit. The downstairs Tenants smoked crack in the basement unit. When the lower-level Tenants left the property, he clean out and cleaned up the lower-level rental unit because the Tenants had left the lower-level rental unit "in a mess" and made repairs.

The Tenant testified he needed to replace taps and that was the reason for the "shortfall" in the rent on March 1, 2022. The Tenant disputes Counsel's testimony that the Landlord did not approve the renovations, repairs, and property improvements. The Tenant testified that he undertook repairs of the rental units in lieu of paying rent based on an agreement with the Landlord. Although the Tenant stated he had evidence of this agreement, he did not submit any evidence of said agreement between the parties, invoices for work performed, or receipts for materials into evidence.

The Tenant argues the Landlord owes him money; he does not owe the Landlord money and for this reason refuses to pay rent again reiterating he planned to sue the Landlord in Supreme Court for 'not paying what is owed'. The Tenant testified that the Landlord hired a Property Manager to inspect the rental unit who walked through the house and told the Tenant, "the house looks amazing". The Tenant stated the reason the house looks amazing is because of all the labour and repairs he did.

The Tenant also testified that a Bylaw Officer inspected the residential property and told the Tenant that the property owners were "slum landlords".

The Tenant testified that since the start of the tenancy, he was unable to get his mail from the mailbox because the Landlord did not provide a mailbox key. The Tenant also argues that the Notices, sent by email, are invalid because the Tenant did not consent to receiving Landlord/Tenant correspondence by email and the email used was not a valid email.

The Tenant confirmed he applied to cancel the 10-Day Notice issued on June 1, 2022 (sent by email) on July 27, 2022. The Tenant states that he first received the June 1, 2022 Notice on July 26, 2022. The Tenant was also aware of the Landlord's registered letter sent July 18, 2022. The Tenant did not deny receiving the One Month Notice issued December 6, 2022 sent by Canada Parcel Post.

### **Analysis**

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The Act s. 46 outlines how a tenancy can end for unpaid rent.

#### **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]

The *Act*, s. 26(1) specifies the rules about payment of rent. It states a Tenant *must* pay rent when it is due under the tenancy agreement whether or not the Landlord complies with the *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.

#### **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. [emphasis added]

There are six (6) legal reasons a Tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. 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*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1) (f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

*Guideline 30* states a Landlord can end a fixed term tenancy early if the tenant fails to pay rent.

*Guideline 12* states:

In order to serve documents by email, the party being served must have provided an email address specifically for service purposes. If there is any doubt about whether an email address had been given for service purposes, an alternate method of service *should* be used. [emphasis added]

The *Guideline* states if there is any doubt an alternative method of service ***should*** be used. The word *should* indicate a permissive provision, ordinarily implying some degree of discretion.

*Guideline 12*, "Service Provisions" also provides, in part, as follows:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52 of the *Act*, section 55 of the *Act* requires that I must grant an order of possession to a Landlord.

**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 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.

### **10 Day Notices and One Month Notice to End Tenancy for Cause**

The Landlord served the Tenants with the following 10 Day Notices dated: June 1, 2022; June 7, 2022; July 15, 2022; August 18, 2022. On December 5 and 6, 2022 the Landlord served both Tenants with a One Month Notice for Cause.

The Tenant in affirmed testimony stated that the Notices sent by email were sent to the incorrect email address, an address he no longer uses and he did not receive them. At the December 19, 2022 hearing, he provided an alternate email for the exchange of evidence. The Tenant also argued that he never agreed to or provided an email address to the Landlord specifically for service purposes.

Counsel disputes the Tenant's argument stating that the parties agreed to email/text exchanges from the commencement of the tenancy for all tenancy purposes. Counsel stated the primary method of communication between the parties was always text/email. Based on this understanding the Landlord continued served the Tenants by email. There are multiple email exchanges between the parties about the service of the Notices and the Tenant did not tell the Landlord to serve the documents differently.

Notwithstanding the email exchanges, the Landlord also sent a July 15, 2022 10 Day Notice to the Tenant by Canada Post Registered Mail. Counsel submitted the tracking information which confirms the mailing, the multiple notifications sent to the Tenant by Canada Post which the Tenant failed to respond to resulting in the letter returned to the Landlord. As per *Guideline 12*, a party cannot deliberately refuse to collect the registered letter then argue s/he was not served.

Although the Tenant testified that the Notices were sent to an inactive email address, the Tenant applied for Dispute Resolution based on the 10-Day Notice sent by email on June 1, 2022. In his application, the Tenant alleged he only received the June 1, 2022 Notice on July 26, 2022 and immediately applied to the RTB on July 27, 2022; however, on page 3 of the Tenant's application he writes, "this is second or third notice". Thus the Tenant was aware of other Notices issued by the Landlord via email and was aware that SRW had received the same Notices.

I also note that the email address the Tenant provided to the RTB upon filing his application, which was used by the RTB to communicate with the Tenant, was the email address the Tenant testified he no longer used. The Tenant received his Notice of Dispute Resolution Proceedings at this email address.

I find the Tenants were served with the 10 Day Notices and One Month Notice in accordance with s. 88 of the Act.

### **Tenants' Application for Dispute Resolution**

The Landlord issued multiple 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The first paragraph on the 10 Day Notice reads:

**Tenant: This is a legal notice that could lead to you being evicted from your home**

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Services BC Office or by going to the Residential Tenancy Branch Office ...

Similarly, the One Month Notice for Cause reads, in part, "**Within 10 days of receiving the notice**" the Tenant must apply for Dispute Resolution.

In both cases, if a Tenant does not dispute the Notice the tenant is "conclusively presumed" to have accepted the Notice and must move out of the rental unit on the effective date on the Notice. I note the Tenant applied for dispute resolution on the June 1, 2022 Notice only. I need only uphold one Notice to end the tenancy.

### **June 1, 2022 10 Day Notice**

I accept as fact, the Tenant received the June 1, 2022 Notice on July 26, 2022 and filed an application for dispute resolution on July 27, 2022 within five (5) days after receipt of the Notice. The Tenant confirms rent has not been paid in full since February 1, 2022 and has withheld payment because he has not been paid by the Landlord for work product.

As stated above, there are only six (6) legal reasons a Tenant can withhold rent. Although the Tenant argues he had the Landlord's permission to withhold rent in exchange for work performed, the Tenant provided no supporting evidence to confirm such an agreement despite having since July 27, 2022 to do so. Based on the evidence available, I am unable to conclude that the Tenant had a legal right under the Act to deduct all or a portion of rent. The Tenant's Application to cancel the 10-Day Notice is dismissed, without leave to reapply.

The Tenants are overholding. I grant the Landlord an Order of Possession effective 2 days after service on the Tenants.

The Tenant also applied for a monetary order for repairs, renovations, and yard work that he alleges were sanctioned by the Landlord but remains unpaid and plans to sue the Landlord. I dismiss the Tenant's application for a monetary compensation, **with leave to reapply**. As I explained to the parties at the start of the hearing, this means the Tenant may be able to file a new application for monetary compensation with the RTB. If the Tenant decides to apply for dispute resolution, the Tenant may want to contact an Information Officer at the RTB to confirm what information, evidence, and documents may

be helpful to include in his application for dispute resolution. I have included the RTB contact link for the both parties reference.<sup>1</sup>

Having dismissed the Tenant's application to cancel the 10 day Notice of June 1, 2022, I turn my mind to the form and content of the 10 Day Notice signed and dated June 1, 2022. To be of force and effect, the 10-Day Notice must meet the formal requirements of s. 52 of the *Act*.

I find the 10-Day Notice dated June 1, 2022 complies with the form and content of s. 52. I, therefore, grant the Landlord an Order of Possession.

The Landlord submitted a monetary order for:

- unpaid rent,
- unpaid utilities ,and
- penalties.

The Landlord submitted a ledger with a breakdown of the compensation requested. I will address each issue separately.

#### Unpaid Rent

The tenancy agreement provided by the Landlord states rent is payable on the first day of the month . The Tenant has not paid full rent since March 1, 2022. Although Counsel testified that there is an outstanding balance for March rent in the amount of \$125.00, it was not included in the calculations submitted to the RTB.

Month	Amount Due	Total
April 1, 2022	\$2600.00	\$ 2,600.00
May 1, 2022	\$2600.00	\$ 5,200.00
June 1, 2022	\$2600.00	\$ 7800.00
July 1, 2022	\$2600.00	\$10,400.00
August 1, 2022	\$2600.00	\$13,000.00
September 1, 2022	\$2600.00	\$15,600.00
October 1, 2022	\$2600.00	\$18,200.00
November 1, 2022	\$2600.00	\$20,800.00
December 1, 2022	\$2600.00	\$23,400.00
	<b>TOTAL RENT OWING</b>	<b><u>\$23,400.00</u></b>

The monetary order is consistent with the Notices to end tenancy. I am satisfied the Landlord has established that the Tenant is in rental arrears and the amount of the rental arrears. I find no evidence that the Tenant had a legal basis to withhold rent pursuant to the *Act*. The Tenants could have applied for dispute resolution if they felt there were issues that needed to be addressed, prior to withholding his rent.

I grant the Landlord a monetary order for unpaid rent in the amount of **\$23,400.00**.

---

<sup>1</sup> <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/contact-the-residential-tenancy-branch>

### **Unpaid Utilities**

The Landlord submitted a monetary order for unpaid utilities in the amount of **\$1659.51**. In Clause 3(b) under “Additional Information” the tenancy agreement reads:

Tenants are responsible for: all utility bills, snow and lawn maintenance and property management.

Under additional terms and agreement, Item 6 reads:

Main level Tenants will be responsible for the Utility Bills 70/30 sharing.

If a tenancy agreement requires the Tenant to pay utilities to the Landlord and the Tenant fails to pay, the Landlord is required to provide the Tenant with a copy of the bill along with the *demand letter*. The utility bill should provide:

- the billing date (at least 30 days **before** the 10-day notice was issued [for unpaid utilities])
- the address where services were provided (must match the rental address); and
- the amount of utilities charged for that billing period.

The *Act* requires the Landlord to give the Tenant at least 30 days to pay the utilities before issuing a 10 Day Notice. The demand letter must be dated and provide the amount of money owed in outstanding utilities along with a copy of the utility bills.

If the Tenants fail to pay the outstanding monies owed for utilities, the Landlord can issue a 10 Day Notice. The dollar amount in the demand letter amount must match the amount on the accompanying bills, the 10 Day Notice, and the Landlord’s application. If the Landlord has not allowed a full 30 days between the demand letter and the 10 Day Notice issue dates, the portion of the Landlord’s application relating to utilities may be dismissed. The Landlord must prove they served the demand letter and utility bills to the Tenant.

Although the Landlord provided a “Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities”, there is insufficient evidence available to confirm that the Landlord sent a *demand letter* to the Tenants with the utility bills and gave the Tenants at least 30 days to comply.

The Landlord’s application for unpaid utilities is dismissed, with leave to reapply.

### **Penalty for Delayed Rent**

I have reviewed the tenancy agreement and find that it contains terms that are contrary to the law. The regulations to the *Act* states:

#### **Non-refundable fees charged by landlord**

- 7** (1) A landlord may charge any of the following non-refundable fees:
- (a) direct cost of replacing keys or other access devices;
  - (b) direct cost of additional keys or other access devices requested by the tenant;
  - (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
  - (d) subject to subsection (2), an administrative fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;**
  - (e) subject to subsection (2), a fee that does not exceed the greater of \$25.00 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
  - (f) a move-in or move-out fee charge by a strata corporation to the landlord;
  - (g) a fee for services or facilities requested by the tenant if those services or facilities are not required to be provided under the tenancy agreement.
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. [emphasis added]

As found in the "Additional Terms and Agreement", Item 1 reads:

Rent delay is subject to \$25.00/day penalty.

The Landlord requested a monetary award in the amount of \$6875.00 total in penalty for delayed rent.

Date	Penalty	Total
April 1, 2022-November 1, 2022	\$6100.00	\$6100.00
December 1-31, 2022	\$ 775.00	<u>\$6875.00</u>
	<b>TOTAL</b>	<b><u>\$6875.00</u></b>

A Landlord may not charge for any other non-refundable fees other than as set out in the regulation provided above. The \$25.00 "administrative fee" set out in *Regulation 7()(d)* applies to NSF cheques or late rent payments in a given month and is meant to offset the administrative costs incurred by the Landlord. It is not intended as a daily fee levied against a Tenant.

The Landlord's application for **\$6875.00** in penalty charges for delayed rent is hereby dismissed, without leave to reapply.

**In sum:**

Tenant:

I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice for unpaid rent, **without leave to reapply.**

The Tenants' application for monetary compensation is dismissed, **with leave to reapply.** Liberty to reapply is not an extension of any applicable timelines.

Landlord:

The Landlord is **granted** an order of possession and a monetary order for unpaid rent in the amount of **\$23,400.00**.

I dismiss the portion of the Landlord's application for nonpayment of utilities in the amount of \$1659.51, **with leave to reapply**.

I dismiss the portion of the Landlord's application for a daily penalty of \$25.00 totaling \$6875.00, **without leave to reapply**.

### **Conclusion**

Pursuant to sections 67 of the *Act*, I order that the Tenants pay the Landlord \$23,400.00, representing the following: rental arrears April 1, 2022 through December 1, 2022.

Pursuant to section 55 of the *Act*, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two (2) days of being served with a copy of this decision and attached order(s) by the Landlord.

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 21, 2023

---

Residential Tenancy Branch