



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes            CNR, MNDCT, FFT

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”), pursuant to section 46 of the Act;
2. a monetary order for compensation for damage or loss under the Act, regulation, or tenancy agreement pursuant to section 67 of the Act; and,
3. authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

JX appeared at the hearing as agent for the landlord. YC (the “tenant”) appeared at the hearing. TT appeared as lawyer for the tenant.

TT confirmed that the tenant served the notice of dispute resolution package and supporting documentary evidence on the landlord. JX confirmed receipt of the same. JX served the tenant with their supporting evidence and TT confirmed the same. I find that all parties have been served with the required documents in accordance with the Act.

The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

### Issue(s) to be Decided

- Should the landlord’s 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agree that the tenancy commenced on October 1, 2020, by way of an oral tenancy agreement. Rent is \$600.00 due on the first of the month. The tenant testified that the landlord collected a security deposit of \$300.00 which they continue to hold in trust.

Included in the landlord's evidence is a Proof of Service for the 10-Day Notice which indicates it was served on October 11<sup>th</sup>, 2022 by attaching a copy to the bedroom door of the tenant. The tenant confirms receipt of the 10-Day Notice on October 11, 2022.

JX testified that the tenant did not pay rent in full for the month of October 2022 and that the landlord served the 10-Day Notice for unpaid rent on that basis. JX testified that a previous dispute resulted in a settlement between the parties in which the landlord agreed that the tenant would deduct \$100.00 from rent on a one-time basis to recover the filing fee for that proceeding. However, JX testified that the tenant deducted more than \$100.00 from the rent.

JX testified that when the landlord asked the tenant to pay the remainder of the rent, the tenant attempted to mislead the landlord and stated that the previous Arbitrator allowed the tenant to deduct an additional \$250.00 for reimbursement of the amount paid by the tenant for internet services in the rental unit.

JX submitted that the tenant advised the landlord that they did not need to discuss the matter with the landlord and that they were entitled to deduct the \$250.00. JX argued that there was no prior consent from the landlord to deduct the additional \$250.00 and there is no order from the Director authorizing the tenant to deduct more than \$100.00.

JX testified that the landlord was not provided with a copy of the official receipts from the cable company prior to issuing the 10-Day Notice. JX submitted that they do not believe that the loss of internet services constitutes the need for emergency repairs.

TT argued that the tenant was entitled to withhold the \$250.00 from the rent payment because the landlord disconnected an essential service that had been agreed upon and had been provided during the tenancy. TT submitted that the tenant was forced as an emergency to pay for her own internet service that was unnecessarily cut off by the landlord.

TT went on to submit, that in their view, this is a continuation of a previous dispute and an attempt by the landlord to unlawfully evict the tenant. TT stated that the landlord previously attempted to evict the tenant to rent the unit for a higher amount.

TT attended the first hearing and stated that the Arbitrator warned the landlord that they would not like their decision and gave them a chance to withdraw the Notice. TT pointed to the decision of the first hearing dated September 23, 2022, and argued that on the issue of the internet services, the Arbitrator allowed the tenant leave to reapply for the costs.

TT submitted that the tenant has tried multiple times to contact the landlord on the issue of cutting off the internet and that the tenant provided the landlord with the receipts for the costs incurred by the tenant for their own internet services. Included in the tenant's evidence package are copies of the receipts in question.

TT argued that the landlord has continued to accept rent from the tenant and that action alone legally indicates that the landlord has accepted the continuation of the tenancy.

### Analysis

Based on the evidence and testimony of the parties, I find the tenant was served with the 10-Day Notice in accordance with section 89 of the Act.

Section 33 of the Act defines "emergency repairs" as repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. Examples per Policy Guideline 51 include but are not limited to, repairs made to: major leaks in the pipes or roof; damaged or blocked water or sewer pipes or plumbing fixtures; and, the primary heating system.

According to section 33 (7) of the Act if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I have considered TT's submissions, and I acknowledge the inconvenience to the tenant when the internet services which had previously been available to them, became unavailable. However, I find that the tenant acquiring their own internet services does not fall within the definition of emergency repairs under the Act as it was not urgent or necessary for the health and safety of the tenant. On that basis, I find that the landlord was not required to reimburse the tenant the \$250.00 they paid for internet services nor was the tenant entitled to withhold the \$250.00 from the rent.

I have also considered the previous decision of this office and I accept that the tenant was awarded leave to re-apply on the matter of requiring the landlord to provide services or facilities required by the tenancy agreement or law, pursuant to section 62(3) of the Act. However, this is not the course of action that was taken by the tenant. Rather, the tenant withheld \$250.00 from the rent without any entitlement to do so.

The 10-Day Notice is included in the evidence. I find the 10-Day Notice meets the form and content requirements of section 52 of the Act.

Based on the foregoing, I find the landlord is entitled to an Order of Possession under section 55(1) of the Act which will be effective March 31, 2023, at 1:00pm

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$250.00 to the landlord.

The landlord continues to hold the tenant's security of \$300.00 in trust for the tenant. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain \$250.00 of the tenant's security deposit in satisfaction of the monetary order.

As the tenant was unsuccessful in this application, they are not entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an Order of Possession which will be effective March 31, 2023, at 1:00 p.m. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to retain \$250.00 of the tenant's security deposit in satisfaction of the monetary order.

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: February 27, 2023

---

Residential Tenancy Branch