



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      CNR CNC RR RP  
                             OPR-DR MNR-DR FFL

### Introduction

The tenant disputes two notices to end the tenancy (one of which is a *10 Day Notice to End Tenancy for Unpaid Rent*, hereafter the “Notice”), they sought an order for repairs, and an order for a rent reduction, pursuant to the *Residential Tenancy Act* (the “Act”).

By way of cross-application the landlord sought an order of possession and a monetary order based on the Notice, and they sought to recover the cost of the filing fee.

### Preliminary Issue

In the interests of hearing time management, and given that the most recent notice to end tenancy issued was the Notice, I exercised my discretion under Rule 2.3 of the Rules of Procedure and only heard the parties’ testimony regarding the Notice. As such, the claims for orders for repairs and for the reduction of rent are dismissed without leave to reapply. Last, given the outcome of this application the dispute of the *One Month Notice to End Tenancy for Cause* is dismissed without leave to reapply.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary for unpaid rent?
4. Is the landlord entitled to recover the cost of the application filing fee?

### Background and Evidence

In reaching this decision, I have considered all of the parties’ evidence and submissions, but I only refer to what is necessary to explain my decision. Neither party raised any issue regarding the service of evidence.

The landlord's agent (hereafter the "landlord") testified under oath that the tenancy began March 1, 2020 and monthly rent, due on the first day of the month, is \$1,008.00. The tenant paid a \$487.50 security deposit and a \$487.50 pet damage deposit. The deposits remain in the landlord's trust pending the outcome of these applications. There is in evidence a copy of a written tenancy agreement.

The landlord testified that the Notice, of which a copy was in evidence, was served on the tenant on January 13, 2023 for failure to pay rent on January 2, 2023. The Notice was served by being posted to the door of the rental unit. The landlord further testified that rent owing on January 1, 2023 was \$2,986.00. As of February 23, 2023 the tenant owes \$3,994.00 in unpaid rent, submitted the landlord.

The tenant testified under oath that "there's nothing to dispute" and that he stopped paying rent four months ago because the landlord (the corporate landlord) has failed to undertake any maintenance on the residential multi-rental unit property. The property is an eleven-storey apartment building in downtown Victoria.

The tenant explained that if the landlord is not going to do any maintenance, then he is not going to pay rent. He further explained that it took three months for the landlord to fix his shower, it took five months to get the sliding glass door fixed, and that the landlord never cleans the exterior of the building. An exterior window has bird feces on it and has been like this for many months.

The building or property manager is, according to the tenant, "fat, lazy, old, [and] way past their prime," and they do not take care of any maintenance around the building. The "whole building is a pigsty," added the tenant. Last, the tenant testified that he has not spent any money on doing any of the required maintenance because that is the responsibility of the landlord.

The landlord did not have any final submissions or rebuttal evidence.

### 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. Where this onus is reversed is when a tenant disputes a notice to end the tenancy. In such disputes the onus falls upon the landlord who issued the notice to end the tenancy to establish a legal basis on which the notice to end the tenancy was given.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The landlord's evidence shows—and the tenant did not dispute this evidence—that the tenant did not pay rent when it was due on January 1, 2023 and that the tenant has not paid any rent for four months. The tenant currently owes \$3,994.00 in rent arrears.

Thus, it is my finding that the Notice was issued for a valid reason under the Act, namely, the tenant's non-payment of rent. While the tenant may be unhappy with the landlord's performance in respect of maintenance, a tenant cannot simply withhold rent for lack of maintenance. The only situation where a tenant might have a valid reason to withhold rent is where the tenant personally spent money on emergency repairs and where a landlord refuses to reimburse such expenses. This is not such a situation.

Finally, having carefully reviewed all three pages of the Notice it is my conclusion that it complies with the form and content requirements of section 52.

Given these findings the tenant's application to cancel the Notice is dismissed and the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is issued with this Decision and the landlord must serve a copy of the order of possession upon the tenant. The tenant has two days to vacate the rental unit from the date of service or the date of deemed service.

Because 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 \$3,994.00 to the landlord.

The landlord is entitled to an additional \$100.00 to cover the cost of the application filing fee under section 72 of the Act. In total, the landlord is awarded \$4,094.00.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the \$975.00 security and pet damage deposits in partial satisfaction of the payment order. A monetary order for the remaining amount (\$3,119.00) is issued with this Decision and the order must be served on the tenant by the landlord. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

**The tenant's application is DISMISSED, without leave to reapply.**

**The landlord's application is GRANTED, subject to the orders as set out above.**

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 24, 2023

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Residential Tenancy Branch