



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNC, RR, RP, OLC, FFT

### Introduction

On October 21, 2022, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month Notice to End Tenancy for Cause (the One-Month Notice) dated October 11, 2022, to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) dated October 18, 2022, to request rent reduction for repairs, services or facilities agreed upon but not provided, for an order that the Landlord make repairs to the unit, site or property, for an order for the Landlord to comply with the *Act*, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters – Exchange of Evidence

At the outset of these proceedings the exchange of evidence was considered, the Landlord testified that they received the Tenant's evidence package late on February 22, 2023, which contained only seven documents. The Tenant testified that they served their evidence package on the Landlord on February 21, 2023.

The Residential Tenancy Branch (RTB) Rule of Procedure states the following regarding the exchange of evidence for a hearing:

#### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding**

"Package The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch or within a different period specified by the director, serve each respondent with copies of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]."

#### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

"Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than **14 days before** the hearing."

Pursuant to section 3.14 of the RTB rules of procedure, I find that the Tenant was required to ensure that the Landlord had received their evidence package no later than February 16, 2022. I accept the Landlord's testimony they received the Tenant's evidence package on February 22, 2023, eight days before the date of these proceedings. Therefore, as the Landlord did not receive the Tenant's evidence package in accordance with the RTB rules of procedure, I will not consider the Tenant's documentary evidence in my decision for these proceedings.

The Tenant testified that they did not receive an evidence package from the Landlord. The Landlord testified that when they attempted to serve the Tenant with their evidence package, the Tenant refused to sign an acknowledgment form for the service, so they did not give them the evidence package. The Landlord confirmed that they made no other attempt to serve their evidence package to the Tenant.

### **3.15 Respondent's evidence provided in single package**

"Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

I accept the Landlord's testimony that they did not serve their documentary evidence package to the Tenant. Therefore, as the Tenant did not receive the Landlord's evidence package, I will not consider the Landlord's documentary evidence in my decision for these proceedings.

As neither the Landlord nor the Tenant had served each other with their respective documentary evidence packages, in accordance with the RTB rules of procedure, my decision in this proceeding will be based on the verbal submission of these parties. However, as both parties have acknowledged copies of the One-Month and the 10-Day

Notices to end tenancy, I will consider those two documents in my decision for these proceedings.

### Preliminary Matters – Related Issues

I have reviewed the Tenant's application that I have before me, and I note that they have applied to cancel two Notices to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Notices. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenant's claims to request rent reduction for repairs, services or facilities agreed upon but not provided, for an order that the Landlord make repairs to the unit, site or property, for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice, to cancel the 10-Day Notice, and to recover the filing fee for this hearing.

### Issues to be Decided

- Should the Notice dated October 11, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Notice dated October 18, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the tenancy began on April 1, 2022, as a two-year fixed term tenancy, that rent in the amount of \$4,800.00 is due on the first of each month and that the Landlord is holding a \$2,400.00 security deposit and a \$2,400.00 pet damage deposit for this tenancy.

The Landlord testified that they had served the One-Notice to the Tenant by email on October 11, 2022, indicating that the Tenant was required to vacate the rental unit as of November 30, 2022. The Tenant acknowledged receipt of the One-Month Notice.

The reason checked off by the Landlord within the Notice is as follows:

- *Tenant is repeatedly late paying rent*

The Landlord testified that the Tenant had paid the rent late three times for this tenancy; in April, May and October 2022.

The Tenant testified that they agree the rent had been paid late in April and May 2022, due to some banking issues but that they did not agree that the rent had been paid late in October 2022.

The Landlord testified that they had served a 10-Day to the Tenant by email on October 18, 2022, indicating that the Tenant was past due in the rent payment for October 2022, in the amount of \$4,800.00. The Landlord testified that they made an error on the 10-Day Notice and that the Tenant had only been past due \$1,190.00 when they served the Notice. The 10-Day Notice indicated that the Tenant was required to vacate the rental unit as of October 31, 2022. The Tenant acknowledged receipt of the 10-Day Notice.

The Tenant testified that the dryer had broken down in September 2022 and that they had arranged to have it fixed at their own expense, with the Landlord's permission. The Tenant testified that they had provided the Landlord with a copy of the bill and deducted that expense from the October 2022 rent for this tenancy, in the amount of \$1,190.00.

The Landlord testified that the Tenant had advised them the dryer required repairs and that as they did not live in the area, they had told the Tenant to go ahead and get the repairs completed as it would be faster than waiting for them, the Landlord, to arrange for a repair.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that they served the One-Month Notice to the Tenant by email, sent on October 11, 2022. Pursuant to section 44 of the *Residential Tenancy Regulations*, I find that the Tenant was deemed to have received the One-Month Notice to End Tenancy on October 14, 2022, three days after the Landlord emailed the One-Month Notice to the Tenant.

Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Therefore, I find the Tenant had until October 24, 2022, to file their application to dispute the Notice. I have reviewed the Tenant's application for these proceedings and noted that the Tenant filed their application on October 21, 2022, within the statutory time limit.

In this case, the landlord is seeking to end this tenancy due to the repeated late payment of rent. Section 47 of the *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. The Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent, gives further guidance stating:

### **Residential Tenancy Policy Guideline #38. Repeated Late Payment of Rent**

"Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision."

In this case, I accept the agreed-upon testimony of these parties that the Tenant did pay the rent late in April and May 2022. However, I find that the parties, in this case, have offered conflicting verbal testimony regarding the payment of the October 2022 rent for

this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As stated above, it is the Landlord who holds the burden of proving that their Notices were issued in accordance with the Act, therefore it is the Landlord who must provide sufficient evidence over and above their testimony to establish their claims.

As the Landlord has not provided any documentary evidence to these proceedings, that met the requirements of the Rules of Procedure, I must find that there is insufficient evidence before me, to outweigh the conflicting verbal testimony regarding the payment of the October 2022 rent that I have before me in these proceedings. Therefore, I find the Landlord has only proven the late payment of rent, twice, for this tenancy, and that two late payments are insufficient cause to justify the Notice issued by the Landlord. Consequently, I grant the Tenant's application to cancel the One-Month Notice dated October 11, 2022.

The Landlord is also seeking to end this tenancy due to non-payment of rent. I accept the testimony of the Landlord that the served the 10-Day Notice to the Tenant by email, sent on October 18, 2022. Pursuant to section 44 of the Residential Tenancy Regulations, I find that the Tenant was deemed to have received the 10-Day Notice to End Tenancy on October 21, 2022, three days after the Landlord emailed the One-Month Notice to the Tenant.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

***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].***

***(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.***

- (4) Within 5 days after receiving a notice under this section, the tenant may*  
*(a) pay the overdue rent, in which case the notice has no effect,*  
*or*  
*(b) dispute the notice by making an application for dispute*  
*resolution.*
- (5) If a tenant who has received a notice under this section does not pay*  
*the rent or make an application for dispute resolution in accordance with*  
*subsection (4), the tenant*  
*(a) is conclusively presumed to have accepted that the tenancy*  
*ends on the effective date of the notice, and*  
*(b) must vacate the rental unit to which the notice relates by that*  
*date.*

Therefore, I find the Tenant had until October 26, 2022, to file their application to dispute the 10-day Notice. I have reviewed the Tenant's application for these proceedings, and I noted that the Tenant filed their application on October 21, 2022, within the statutory time limit.

The Landlord has claimed that the Tenant made a deduction to the rent for October 2022, without the Landlord's permission. The Tenant has submitted that they had the Landlord's consent to make the repairs and deduct the cost from the rent.

Again, I find that the parties, in this case, have offered conflicting verbal testimony regarding the October 2022 rent, and a repair bill for this tenancy. As stated above, it is the Landlord who must provide sufficient evidence over and above their testimony to establish the claims made in their Notices.

Under the *Act*, it is the landlord who is responsible to complete all regular repairs to the rental; however, in this case, I accept the Landlord's testimony that they had given permission to the Tenant to go ahead and make regular repairs to the dryer in the rental unit. Additionally, based on the testimony I have received from both parties in these proceedings, and on a balance of probabilities, I find that the Landlord had also given the Tenant permission to deduct the cost of this regular repair from their rent.

After hearing the totality of the verbal submission of the parties in this case, I find that the reason for the dispute between these parties, is not whether the Tenant had permission to repair the dryer or deduct the cost of the repair from the rent, it is more in the nature that the Landlord has changed their mind, after the fact, and is now trying to



rescind their approval to allow the tenant to effect the agreed to repairs to the rental unit.

Therefore, I find that the Tenant had been given permission, by the Landlord, to repair the dryer in the rental unit and to deduct the cost of the repair from the October rent for this rental unit. Consequently, I find that the rent for October 2022 has been paid in full for this tenancy, and I grant the Tenant's application to cancel the 10-Day Notice dated October 18, 2022.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00, from their next month's rent in satisfaction of this award.

### Conclusion

The Tenant's application to cancel the One-Month Notice dated October 11, 2022, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

The Tenant's application to cancel the 10-Day Notice dated October 18, 2022, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent in the recovery of their filing fee for these proceedings.

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: March 3, 2023

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Residential Tenancy Branch