



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, LRE, OLC, FFT / OPR-DR, MNR-DR, FFL

### Introduction

The hearing was convened following applications for dispute resolution (“Applications”) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover the cost of the filing fee under section 72 of the Act, to suspend or set conditions on the Landlord's right to enter the rental unit and for the Landlord to comply with the Act, regulation or the tenancy agreement under section 62 of the Act.

The Landlord requests an Order of Possession, a Monetary Order for unpaid rent and authorization to recover the filing fee for their Application from the Tenant.

Parties appeared for both the Landlord and the Tenant. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties confirmed they served their Notice of Dispute Resolution Package (the “Materials”) on the other party. Both parties confirmed receipt of the other’s Materials and raised no issues with service. Therefore, I find that pursuant to section 89 of the Act that both the Tenant’s and the Landlord’s Materials were sufficiently served to the other party.

The Tenant stated that they provided further evidence to support their Application to a Service BC office and the offices of the Landlord’s agent the same day as the hearing.

Rule 3.14 of the Rules of Procedure provides that Applicant's evidence must be received by the Respondent and the Residential Tenancy Branch or Service BC not less than 14 days before the hearing. Therefore, the evidence excluded from consideration.

#### Preliminary Issue – Request for Adjournment

The Tenant requested that the hearing be adjourned to a later date to allow the parties to explore the possibility of coming to a settlement. The Landlord's Agent opposed the request for an adjournment and stated they had instructions from the Landlord to seek an Order of Possession.

Rule 7.8 of the *Rules of Procedure* allows an Arbitrator to adjourn the hearing to another time and Rule 7.9 sets out the factors that must be considered when a request to adjourn is made:

- 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.

I find the parties have had sufficient time to explore settlement prior to the hearing. Additionally, given the instructions provide by the Landlord to their Agent to seek an Order of Possession, I do not find it likely that parties would be able to reach a resolution following an adjournment. Accordingly, the Tenant's request for an adjournment was denied.

#### Preliminary Issue – Severing of Issues

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the most pressing and urgent issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss without leave to re-apply the Tenant's request for the Landlord to comply with the Act, Regulation or the Tenancy Agreement and provide services or facilities required by the Tenancy Agreement or law.

### Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord's Agent testified that the tenancy started on December 1, 2021 on a month-to-month basis. Rent is \$1,800.00 per month due on the first day of the month. No security deposit or pet damage deposit was taken. A written Tenancy Agreement signed December 1, 2021 by the Tenant and the Landlord was submitted as evidence by the Landlord's Agent.

The Tenant stated that there were two agreements between them and the Landlord. The other was an agreement to purchase the rental unit. They submitted that the Tenancy Agreement signed on December 1, 2021 was only signed so a second mortgage could be taken out by the Landlord.

The Landlord's Agent stated they did not know anything about another agreement between the parties or about any planned sale. They reiterated their instructions were to seek an Order of Possession as the rent had not been paid.

Based on the testimony from both parties and the evidence submitted by the Landlord's Agent, namely the signed Tenancy Agreement, I find that there is a residential tenancy agreement in place between the Tenant and the Landlord.

The Landlord's Agent testified that they had been provided with a copy of the Tenancy Agreement and informed that rent had not been paid for the duration of the tenancy. They served the Notice on October 17, 2022 via registered mail and there has been no attempt to negotiate a payment plan from the Tenant.

The Landlord's Agent stated they were not aware of any intentions from the Landlord to sell the rental unit and that they were not a realtor so would not be able to assist with a sale. They stated the Landlord wants to rent to another tenant and confirmed a total of sixteen month's rent was now outstanding for the period December 2021 to March 2023 inclusive.

The Tenant affirmed that they initially occupied the rental unit as a guest from October 2017 to Spring 2018. They were asked to stay in the rental unit so the Landlord did not have to pay speculation tax.

The Tenant testified that an agreement was made "at some point" for them to purchase the rental unit from the Landlord. This was done in writing but "not a formal agreement" according to the Tenant. A copy of the agreement to purchase has not been submitted as evidence by the Tenant.

The Tenant put forward that the Tenancy Agreement was signed to "piggyback on the first agreement" and that it was only signed so that the Landlord could obtain a second mortgage.

From when the agreement to purchase was signed, the Tenant stated they paid the Landlord \$1,000.00 per month to an account not in the Landlord's name but one they "gave their blessings" to make payments to. The Tenant referred me to a record of banking transactions they submitted as evidence. The records show generic and sporadic transfers, mostly of \$800.00 at a time throughout most of 2018 and some of 2019.

The Tenant stated they have paid the Landlord over \$35,000.00 during the course of the agreement that pre-dated the Tenancy Agreement signed December 1, 2021. They drew my attention to a handwritten document with figures relating to utilities, insurance and other costs. The Tenant stated this was a record of figures kept by the Landlord.

The Tenant stated they did sign the Tenancy Agreement but it was a “signature with conditions”, that they did not expect to have to pay rent and that it was only around August 2022 when the Landlord started to ask for rent.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*, if the landlord gives authorization to not pay rent, or as ordered by the Director. The Tenant put forward no evidence to indicate that any of the above circumstances are applicable, nor are any apparent to me.

Rather, the Tenant stated they did not expect to have to pay rent under the Tenancy Agreement and appeared to be operating under the belief that a second agreement between the parties was in place. The Tenant put forward that this second agreement is for them to purchase the rental unit and that their obligations under the agreement have been met.

Though the Tenant confirmed this purchase agreement, whilst apparently informal, was nevertheless in writing, no copy of the agreement was submitted as evidence. The Tenant’s evidence showing generic banking transactions and handwritten calculations relating to utilities and other payment, to me, does not indicate the presence of an agreement that would preclude the Tenant from paying rent.

Therefore, I am satisfied that the Tenancy Agreement requires the Tenant to pay \$1,800.00 per month in rent. Based on the Tenant’s testimony during the hearing, they have not paid rent since the Tenancy Agreement started. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenant’s Application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 6, 2023.

It is the Landlord's obligation to serve the Order of Possession on the Tenant. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

Since the Tenant's Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$28,800.00 in unpaid rent to the Landlord.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

As the Landlord's Application was successful, I grant their request to recover the filing fee for their Application.

The Monetary Order is summarized below.

Item	Amount
Unpaid rent	\$28,800.00
Filing fee	\$100.00
<b>Total</b>	<b>\$28,900.00</b>

It is the Landlord's obligation to serve the Monetary Order. If the Tenant does not comply with the Monetary Order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord's Application is granted. The Landlord is issued an Order of Possession and a Monetary Order for unpaid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 10, 2023

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Residential Tenancy Branch