



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPU, MNRL, MNDL, MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on December 14, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Enforcement of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- Recovery of unpaid rent or utilities;
- Compensation for damage;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on March 20, 2023, and was attended by the Landlord and the Landlord's spouse. All testimony provided was affirmed. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Landlord was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Tenant, I confirmed service of the Notice of Dispute Resolution Proceeding (NODRP), and evidence as follows. The Landlord testified that the NODRP, which contains a copy of the Application and the Notice of Hearing, as well as the documentary evidence before me was sent to the Tenant at the rental unit address by registered mail on December 22, 2022. They provided me with the registered mail tracking number, which I have recorded on the cover page of the decision. As a result, and in the absence of any evidence or testimony to the contrary, I find that the Tenant was deemed served with the NODRP five days later, on December 27, 2022, pursuant to section 90(a) of the Act. Residential Tenancy Branch (Branch) records show that the NODRP was ready for pick-up on December 19, 2022, to be given or sent by December 22, 2022. I therefore find that the NODRP was served within the timeline set out under section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the details shown in the NODRP were correct, and based on the above, the hearing proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rules 7.1 and 7.3 of the Rules of Procedure. Although the teleconference remained open for the 36-minute duration of the hearing, no one called in on behalf of the Tenant.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, a copy of the decision and any orders issued in their favor will be made available for them to pick-up.

### Preliminary Matters

In their Application the Landlord sought remedies under multiple unrelated sections of the Act. Section 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.

As the Landlord applied to enforce a 10 Day Notice, I find that the priority claim relates to whether the tenancy will continue or end, and the matter of unpaid rent and utilities.

As the other claims are not sufficiently related to the 10 Day Notice, I exercise my discretion to dismiss the following claims by the Landlord with leave to reapply:

- Compensation for damage; and
- Compensation for monetary loss or other money owed.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to recovery of unpaid rent or utilities?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit towards any amounts owed?

Background and Evidence

The Landlord stated that the one-year lease commenced approximately one year ago, that rent in the amount of \$1,600.00 is due on the first day of each month, plus utilities, and that a \$800.00 security deposit was paid, which they still hold.

The Landlord stated that when the Tenant failed to pay rent and utilities as required in November and December of 2022, the 10 Day Notice was personally served on December 3, 2022. The 10 Day Notice in the documentary evidence before me is signed and dated December 3, 2022, has no effective date, and states that as of December 3, 2022, the Tenant owed \$1,700.00 in outstanding rent as follows: \$100.00 for November 2022 and \$1,600.00 for December 2022. The 10 Day Notice also states that \$318.18 in utilities were also owed, for which a demand letter was issued on December 3, 2022.

The Landlord stated that the Tenant neither paid the amounts owed nor filed an Application for Dispute Resolution with the Branch within 5 days after service of the 10 Day Notice and therefore sought an Order of Possession for the rental unit. The Landlord stated that some amounts of rent and utilities have since been paid by the Tenant and although their testimony regarding payment dates and amounts was somewhat disorganized and contradictory, they were adamant that as of the date of the hearing, the Tenant owes only \$1,700.00 in outstanding rent and \$72.00 in outstanding

utilities. A copy of the 10 Day Notice and several utility bills were submitted by the Landlord in support of their testimony.

### Analysis

Based on the undisputed affirmed testimony and documentary evidence before me, I am satisfied that rent in the amount of \$1,600.00 is due on the first day of each month under the tenancy agreement, and that the Tenant is responsible for paying the Landlord for their utility usage. I am also satisfied that the Tenant neither paid the amounts shown on the 10 Day Notice nor sought cancellation of the 10 Day Notice within the timeline set out under section 46(4) of the Act. Pursuant to section 46(5) of the Act, I therefore find that the Tenant is conclusively presumed to have accepted the 10 Day Notice and required to vacate the rental unit in accordance with it.

Although the 10 Day Notice does not contain an effective date, I amend the 10 Day Notice in accordance with sections 68(1) and 53 of the Act to include an effective date of December 13, 2022, and find that the Tenant has been overholding the rental unit since that date. I therefore grant the Landlord an Order of Possession pursuant to sections 55(2)(b) and 68(2)(a) of the Act effective March 31, 2023, at 1:00 P.M.

I am also satisfied that the Tenant currently owes \$1,700.00 in rent for the period of November 1, 2022 - March 31, 2023, plus \$72.00 in outstanding utilities, and I grant the Landlord recovery of these amounts. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to withhold the \$800.00 security deposit toward these amounts, and I grant the Landlord a Monetary Order in the amount of \$1,072.00 for the remaining balance owed pursuant to section 67 of the Act.

### Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on March 31, 2023, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this

Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to withhold the \$800.00 security deposit.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,072.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: March 20, 2023

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Residential Tenancy Branch