



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      CNR, CNC, PSF OLC

### **Introduction**

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlords to provide services or facilities required by law pursuant to section 65.

Both SW and WB attended for the tenants in this dispute. WB confirmed that they had moved out on January 20, 2023 and was no longer a tenant, or a party to this dispute. SW confirmed that they are currently still residing in the rental unit, and was going to vacate the rental unit.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

### **Analysis**

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing SW and the landlords discussed the issues between them, turned their minds to compromise and achieved a resolution of this dispute.

SW and the landlords agreed to the following final and binding settlement of all issues currently under dispute at this time.

1. Both parties entered into a mutual agreement that this tenancy will end on March 15, 2023 at 8:00 p.m., by which date the tenant(s) and any other occupants will have vacated the rental unit.
2. SW agreed that the landlords are entitled to a monetary order for unpaid rent in the amount of \$3,090.00 for this tenancy. SW agreed that in accordance with section 72(2)(b) of the *Act*, the landlords may retain the tenant's security and pet damage deposit, plus applicable interest, in partial satisfaction of the rent owed. The landlords will be provided with a monetary order for the remaining amount.

As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$7.89 is payable as interest on the tenant's security and pet damage deposit from September 1, 2022 when this tenancy began, until the date of this decision, March 15, 2023.

3. SW agreed that the landlords are entitled to \$321.88 for the municipal utility bill for the period of January to March 2023, \$117.42 for the gas bill for the period of January 11, 2023 to February 7, 2023, and \$41.91 in outstanding utilities for the electricity bill for the period of January 10, 2023 to February 6, 2023. The landlords will be provided with a monetary order for these amounts totaling \$481.21.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

**Additional Issue: Additional Monetary Claims Not Addressed**

The landlords requested further monetary orders for outstanding utilities for this tenancy, which are disputed by the tenant.

Rule 2.11 of the RTB Rules of Procedure states the following about the crossing of applications.

### **2.11 Filing an Application for Dispute Resolution to counter a claim**

To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution.

The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [*Documents that must be served with the Notice of Dispute Resolution Proceeding Package*] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [*Respondent's evidence provided in single package*] can be met.

In this case, although the landlords did have the option to file a counter claim, the landlord did not file their own application to be crossed with the tenant's. The landlords testified that they were informed by Information Officers at the RTB that no counterclaims were required. I note that this information is only partially correct, and only applies under the following circumstances, as set out in section 55(1.1) of the *Act*:

Section 55(1) and (1.1) of the *Act* reads as follows:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

In this case, the tenant did file an application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, but as this dispute was resolved by way of a settlement agreement pursuant to section 63 of the *Act*, and no findings were made on the merits of the 10

Day Notice, section 55(1.1) of the *Act* does not apply. I further note that SW agreed to pay the landlords the full amount of unpaid rent requested as part of the settlement agreement above.

The additional monetary claim requested by the landlords pertains to unpaid utilities, which is disputed by the tenant. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. To proceed with any additional claims that were not properly before the Arbitrator at the time of the scheduled hearing would be a breach of the principles of natural justice and procedural fairness. For this reason, the landlords must file their own application for the outstanding utilities, or for any other money owed. Liberty to apply is not an extension of any applicable timelines.

### **Conclusion**

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlords, which is to take effect by 8:00 p.m. on March 15, 2023.

The landlords are provided with this Order in the above terms and the tenant(s) must be served with this Order in the event that the tenant does not abide by condition #1 of the above settlement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a Monetary Order in the landlords' favour as set out in the table below.

<b>Item</b>	<b>Amount</b>
Unpaid Rent up to March 2023	\$3,090.00
Unpaid Utilities (amounts not disputed by the tenant)	481.21
Less security and pet damage deposit held plus applicable interest	-2,002.89
<b>Total Monetary Order to Landlords</b>	<b>\$1,568.32</b>

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible in the event that the tenant does not abide by conditions #2 and 3 of the above agreement. Should the tenant(s) 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 15, 2023

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Residential Tenancy Branch