



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      Tenant: CNR-MT, MNDCT, LRE, OLC, FFT  
Landlords: OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2023 (the "10 Day Notice") pursuant to section 46;
- more time to dispute the 10 Day Notice pursuant to section 66 of the Act;
- a Monetary Order of \$3,519.19 for monetary loss or other money owed by the Landlords;
- an order suspending or setting conditions on the Landlords' right to enter the rental unit pursuant to section 70(1);
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Tenant's application from the Landlords pursuant to section 72.

This hearing also dealt with the Landlords' cross-application under the Act for:

- an Order of Possession under the 10 Day Notice pursuant to section 55;
- a Monetary Order of \$1,975.00 for unpaid rent pursuant to section 55; and
- authorization to recover the Landlords' filing fee from the Tenant pursuant to section 72.

The Landlords and the Tenant attended this hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlords called a witness, RC, to testify during the hearing.

The parties were informed that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

#### Preliminary Matter – Service of Dispute Resolution Documents

The Landlords acknowledged receipt of the Tenant’s notice of dispute resolution proceeding package (the “Tenant’s NDRP Package”) and documentary evidence. I find the Landlords were served with the Tenant’s NDRP Package and documentary evidence in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlords’ documentary evidence. I find the Tenant was served with the Landlords’ documentary evidence in accordance with section 88 of the Act.

Records of the Residential Tenancy Branch (“RTB”) indicate the Landlords submitted their application on February 13, 2023. Records further indicate that the RTB provided the Landlords with the Landlords’ notice of dispute resolution proceeding package (the “Landlords’ NDRP Package”) on March 7, 2023 and scheduled the Landlord’s application to be heard at the same time as the Tenant’s application. The Landlords submitted a registered mail tracking number (referenced on the cover page of this decision) in support of service.

As discussed with the parties during the hearing, I find the Landlords’ application (which seeks an order of possession under the 10 Day Notice and unpaid rent) to deal with the same underlying facts and remedies as those applicable to the Tenant’s claim to cancel the 10 Day Notice. Therefore, I find the Tenant was sufficiently served with the Landlords’ application on March 10, 2023, pursuant to section 71(2)(b) of the Act. I further directed that this hearing deal with both parties’ applications.

#### Preliminary Matter – Severing the Tenant’s Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

##### **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.

## **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis added)

I find the most important issues in this hearing are whether the tenancy will be ending under the 10 Day Notice and whether the Tenant owes the Landlords unpaid rent. I find that all of the Tenant's other claims, with the exception of the claim for reimbursement of the filing fee, to be unrelated to the 10 Day Notice. As discussed with the parties during the hearing and pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss the unrelated claims on the Tenant's application with leave to re-apply.

### Preliminary Matter – Amendment of Landlords' Application

The Landlords testified that the Tenant has not paid for use of the rental unit for this month. Under Rule 4.2 of the Rules of Procedure, in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since an application was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution does not be submitted or served.

Since the Tenant has not left the rental unit, I find the Tenant can reasonably anticipate the Landlord to seek additional compensation for use of the rental unit incurred since the parties made their applications. Accordingly, I allow the Landlords to amend their application to include a \$1,950.00 claim for use of the rental unit by the Tenant in March 2023.

### Issues to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Are the Landlords entitled to an order of possession?

3. Are the Landlords entitled to compensation for unpaid rent?
4. Is the Tenant entitled to reimbursement of her filing fee?
5. Are the Landlords entitled to reimbursement of their filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on December 1, 2022 for a fixed term ending on November 30, 2023. The parties agreed that the Tenant moved in several days prior to the commencement of the term. Rent is \$1,975.00 due on the first day of each month. The Tenant paid a security deposit of \$987.50. Copies of the tenancy agreement have been submitted into evidence.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice has an effective date of February 15, 2023 and states that the Tenant failed to pay rent of \$1,950.00 due on February 1, 2023.

The Landlords and their witness RC testified that a copy of the 10 Day Notice was left in the Tenant's mailbox in on February 2, 2023.

The Landlords explained that they tried to deposit the Tenant's e-transfer for February rent, but were not able to do so. The Landlords testified that they called the Tenant many times after not being able to receive the rent on February 1, 2023. The Landlords referred an email from their bank dated February 3, 2023, which states that the Tenant had cancelled the e-transfer. The Landlords and RC confirmed that a notice to enter the rental unit on February 6, 2023 was left in the Tenant's mailbox together with the 10 Day Notice on February 2, 2023. The Landlords explained that on February 6, 2023, they found the Tenant had changed the lock to the rental unit and put on a keyless lock. The Landlords stated they took off the Tenant's lock and found parts of the original lock missing, so the Landlords had to put in a new lock. The Landlords stated that they told the Tenant they would give her a new key. The Landlords described their observations of the rental unit being used for Airbnb, which the Tenant denied.

The Landlords testified that on or around February 6, 2023, they texted the Tenant to say that they had put the 10 Day Notice in the Tenant's mailbox. The Landlords testified that they also sent a copy of the 10 Day Notice to the Tenant on February 6, 2023. The Tenant denied this.

The Landlords submitted that they received a call from the Tenant and went to meet with the Tenant at the rental unit on February 10, 2023, to collect the overdue rent and to give the Tenant the new key. The Landlords stated that the Tenant told them she would not be paying rent because of the stress the Landlords caused and that the Landlords owed the Tenant money.

The Landlords confirmed that as of the date of this hearing, the Tenant has not paid any rent for February or March 2023.

The Tenant stated that she was out of town and was not able to receive the 10 Day Notice until February 10, 2023 when she returned. The Tenant stated that she called a locksmith to regain access to the rental unit. The Tenant stated that she had put an add-on to the old lock, which would notify the Tenant about people coming, and that was how she knew there were people in the suite.

The Tenant stated that she was told by her bank about suspicious activities in her bank account, and that all of her e-transfers got cancelled. Upon questioning, the Tenant acknowledged that she cancelled the e-transfer to the Landlords on February 3, 2023. The Tenant clarified that the bank did not ask her to cancel outgoing e-transfers but had suggested it. According to the Tenant, she did not talk to the Landlords until February 4, 2023 because she was trying to figure out what the suspicious activity was. The Tenant submitted text message correspondence in which she had expressed that she wanted to resend the funds to the Landlords on February 15, 2023.

The Tenant acknowledged she has not pay any rent for February or March 2023 to the Landlords. The Tenant stated that she received advice from a third party to hold off paying rent until the arbitration hearing.

## Analysis

### *1. Is the Tenant entitled to cancel the 10 Day Notice?*

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

#### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

I accept the Landlords' evidence that a copy of the 10 Day Notice was left in the Tenant's mailbox on February 2, 2023. Under section 90(d) of the Act, a document served by leaving in a mailbox is deemed to be received on the third day after it is left. However, this deemed receipt presumption can be rebutted if fairness requires that it be done. A party wishing to rebut a deemed receipt presumption should provide clear evidence that the document was not received or evidence of the actual date the document was received.

The Tenant's evidence was that she was out of town on February 2, 2023. The Tenant stated that she received a copy of the 10 Day Notice in the mailbox on February 10, 2023 when she returned. I find it is not disputed that the Tenant was not home when the Landlords attended the rental unit on February 6, 2023. I accept the Landlords' evidence that they repaired changes to the lock made by the Tenant on February 6, 2023, which necessitated a new key. The Tenant's evidence is that she regained access to the rental unit on February 10, 2023. The Tenant submitted an invoice from a locksmith dated February 10, 2023 and a text message to the Landlords dated February 10, 2023 confirming receipt of the 10 Day Notice. I note the Landlords say that a copy of the 10 Day Notice was emailed to the Tenant earlier on February 6, 2023. However, I do not have a copy of this email submitted into evidence and the Tenant did not acknowledge receipt.

Based on the foregoing, I find the Tenant was served with the 10 Day Notice on February 10, 2023 in accordance with section 88(g) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. In this case, the Tenant had until February 15, 2023 to dispute the 10 Day Notice or pay the outstanding rent in full. Records of the RTB indicate the Tenant's application was submitted on February 12, 2023. I find the Tenant's application was made within the time limit stipulated under section 46(4)(b) of the Act. As such, I do not find it is necessary to consider whether the Tenant is entitled to more time to dispute the 10 Day Notice under section 66 of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, I find it is undisputed that the Tenant did not pay rent any rent for February and March 2023 to the Landlords.

As mentioned above, a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to withhold rent. The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))

- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

Based on the evidence presented, I am not satisfied that the Tenant had a right under the Act to withhold payment of February and March 2023 rent to the Landlords. Waiting for an arbitration hearing to take place is not a valid reason to withhold payment of rent. I find the Tenant did not argue that she had any of the rights listed above to deduct the rent, nor do I find the Tenant to have explained that there had been an amount, or amounts which would add up, to offset the total unpaid rent owing to the Landlords. I note the items included Tenant's monetary claim that I have severed and dismissed with leave to re-apply (i.e. costs of re-keying the Landlords' new lock, wage loss, compensation of one month's rent and damage deposit), do not fall into any of the categories noted above. The Tenant cannot offset this claim from rent before being awarded an order for monetary compensation and authorization by the RTB under section 72(2)(a) of the Act.

I conclude the Landlords have established the grounds for ending this tenancy as stated in the 10 Day Notice. Accordingly, I dismiss the Tenant's claim to cancel the 10 Day Notice without leave to re-apply.

*2. Are the Landlords entitled to an order of possession?*

Section 55(1) of the Act states:

**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.



Having found the 10 Day Notice to comply with the requirements of section 52 and having dismissed the Tenant's claim to cancel the 10 Day Notice, I find the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

In addition, I find there is no evidence to suggest that the Tenant had vacated the rental unit prior to the hearing date. Pursuant to section 68(2)(a) of the Act, I order that this tenancy is ended the date of the hearing, or March 10, 2023.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective two (2) days after service of the Order upon the Tenant.

*3. Are the Landlords entitled to unpaid rent?*

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

According to Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3"), section 55(1.1) of the Act allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Policy Guideline 3 further states that if the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

I am satisfied that as of the date of the hearing, the Tenant owes unpaid rent of \$3,950.00 (\$1,975.00 × 2 months) to the Landlords for unpaid February and March 2023 rent.

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlords the sum of \$3,950.00.

*4. Is the Tenant entitled to reimbursement of her filing fee?*

The Tenant has not been successful in her application. I decline to order reimbursement of the Tenant's filing fee under section 72(1) of the Act.

*5. Are the Landlords entitled to reimbursement of their filing fee?*

The Landlords have been successful in proving that the 10 Day Notice should be upheld. As the Landlords' application sought relief similar to those that have been granted to the Landlords on the basis of the Tenant's application, I allow the Landlords' claim for reimbursement of their filing fee from the Tenant under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenant's \$987.50 security deposit in partial satisfaction of the total amount awarded to the Landlords in this decision.

The Monetary Order granted to the Landlords for the balance is calculated as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for February and March 2023 (\$1,975.00 × 2 months)	\$3,950.00
Filing Fee	\$100.00
Less Security Deposit	- \$987.50
<b>Total Monetary Order for Landlords</b>	<b>\$3,062.50</b>

Conclusion

The Landlords are successful in proving the grounds for ending the tenancy under the 10 Day Notice and establishing that the Tenant owes \$3,950.00 in unpaid rent. The Landlords' claim to recover the filing fee for their application is granted.

The Tenant's claims to dispute the 10 Day Notice and to recover the Tenant's filing fee are dismissed without leave to re-apply. The balance of the Tenant's claims are severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limit.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days** after service upon the Tenant. 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.

The Landlords are authorized to retain the Tenant's **\$987.50** security deposit in partial satisfaction of the total amount awarded to the Landlords in this decision.

Pursuant to sections 55(1.1) and 72(1) of the Act, I grant the Landlords a Monetary Order in the amount of **\$3,062.50** for the balance. 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 of British Columbia 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 10, 2023

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Residential Tenancy Branch