



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNR, MNRT, MNDCT, OLC, FFT

### Introduction

The hearing took place as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* (the "Act") seeking the following:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46(4)(b) of the Act;
- payment for the cost of emergency repairs pursuant to section 33 of the Act;
- compensation for monetary loss or other money owed pursuant to section 67 of the Act;
- for the Landlord to comply with the Act, *Residential Tenancy Regulation* ("Regulations") or tenancy agreement ("Tenancy Agreement") pursuant to section 62 of the Act; and
- the cost of the filing fee pursuant to section 72 of the Act.

B.L. attended the hearing for the Tenants and A.K. attended for the Landlord. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

B.L. testified they served the Notice of Dispute Resolution Package (the "Materials") on the Landlord on March 4, 2023 in person. The Landlord confirmed receipt of the Materials. The Landlord confirmed they served their evidence to the Tenants in person and via email. B.L. confirmed receipt of the Landlord's evidence and raised no issues with service. Therefore, I find that that Tenants' Materials were sufficiently served to the Landlord and that the Landlord's evidence was sufficiently served to the Tenants.

### Preliminary Issue: Severing

The Tenants 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 Tenants, I determined that the primary issue is the Tenants' request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

### 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 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.

Both parties agreed that the tenancy started on May 1, 2015, that rent is \$2,649.00 per month due on the first day of the month and that the Tenants still occupy the unit. A copy of the Tenancy Agreement was entered into evidence by the Tenants.

B.L. stated the Landlord still holds a security deposit of \$1,225.00 which they say was paid in cash after a cheque for payment of the security deposit did not deposit into the Landlord's bank account due to insufficient funds. The Landlord stated they never received a cash payment from the Tenants so hold no security deposit.

The Landlord testified that for the last two years the Tenants had been planning on vacating the rental unit. The Landlord had stated they advised the Tenants that if they did vacate the rental property, they wanted to move in themselves and asked for a timeframe as to when the Tenants would be leaving.

The Landlord stated that the Tenants would not provide a schedule and said they would just give one month notice when they were vacating the rental unit. The Tenants had requested one month free rent, which the Landlord objected to.

On February 28, 2023 the Landlord received an email from the Tenants giving notice that they would be vacating the rental unit on March 31, 2023. The email also stated that they were getting a month's rent for free. A copy of the email was entered into evidence by both parties.

Rent due on March 1, 2023 was not paid by the Tenants and the Landlord served The Notice on the Tenants in-person and via email on March 2, 2023. The Landlord did not receive any rent payments from the Tenants since serving the Notice.

B.L. Testified that during a telephone conversation between the Tenants and the Landlord on September 12, 2022, the Landlord stated they would give the Tenants one month free rent when they vacated the rental unit. B.L. referred me to a telephone record submitted into evidence by the Tenants which show an eleven minute telephone call took place at 5:33 PM on September 12, 2022.

I was referred to copies of email correspondence entered into evidence by the Tenants which included the email of February 28, 2023 where notice to end the tenancy was given to the Landlord.

B.L. stated their understanding that they would get their last month in the rental property rent-free stems solely from the telephone conversation on September 12, 2022. They referred me to a written statement from their wife and co-Tenant which was entered into evidence by the Tenants. A redacted copy of the statement is reproduced below:

ON SEPTEMBER 12<sup>TH</sup>, 2022 I WAS PRIVY TO A PHONE CONVERSATION BETWEEN MY HUSBAND [REDACTED] AND OUR LANDLORD [REDACTED]. THE PHONE CALL WAS CENTERED AROUND AN EMAIL [REDACTED] RECEIVED EARLIER THAT DAY FROM [REDACTED] WANTING US TO SIGN A MUTUAL AGREEMENT TO END A TENANCY. [REDACTED] SAID WE HAD TWO CHOICES, EITHER SIGN THE AGREEMENT OR SHE WAS GOING TO PUT THE HOUSE UP FOR SALE. [REDACTED] STATED THAT HE WOULD NOT SIGN SOMETHING LIKE THAT, BECAUSE WE WOULD NOT BE ABLE TO GET OUR LAST MONTHS RENT FREE THEN. [REDACTED] REPLIED AND I QUOTE, ' IF THAT IS ALL YOUR CONCERNED ABOUT, IT IS NOT A PROBLEM, YOU CAN HAVE YOUR LAST MONTHS RENT FREE. TO THAT [REDACTED] REPLIED, WE WOULD HAVE TO TALK IT OVER AND HE WOULD GET BACK TO HER,.

The Landlord acknowledged there was a telephone conversation between the parties where they asked the Tenants if they were staying in the rental unit or leaving. The Landlord reiterated that they did not agree to give the Tenants one month free rent at any stage.

### 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 Regulation, if the landlord gives authorization to not pay rent, or as ordered by the Director.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 1, 2023. B.L. states that the Landlord authorized the Tenants

to withhold rent for the last month of the tenancy and that this authorization was given during a telephone conversation with the Landlord on September 12, 2022.

If authorization was given by the Landlord to withhold rent, this would be a valid reason for the Tenants to not pay rent due on March 1, 2023, however the Landlord denies ever giving this authorization.

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Therefore, I find the Tenants must prove that on the balance of probabilities they had authorization from the Landlord to withhold rent due on March 1, 2023.

Based on the testimony from both parties I find it more likely than not that no authorization was given for the Tenants to withhold rent. I note the lack of any reference to such authorization in any of the correspondence or other documentary evidence I was referred to during the hearing, besides the written statement of the co-Tenant. The Landlord issued the Notice promptly after rent was not paid on March 2, 2023, indicating to me that they expected rent to be paid in full. I find the Tenants have failed to prove they had a valid reason to withhold rent.

Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. As I find there was no valid reason to withhold rent, I dismiss the Tenants' Application without leave to reapply.

Section 55(1) of the Act states that if a tenant disputes a landlord's notice to end a tenancy and the application is dismissed, an Order of Possession must be issued provided the notice to end tenancy complies with the form and content requirements set out in section 52 of the Act.

The Notice does not contain the address of the rental unit as this section is left blank which is contrary to section 52(b) of the Act. However, section 68(1) of the Act states that a notice to end tenancy that does not comply with section 52 of the Act may be amended if the person receiving the notice knew, or ought to have known the information that was omitted and that it is reasonable to amend the notice.

I find that the Notice should be amended to include the address of the rental unit. I find the Tenants ought to have known the address of the rental unit as the Notice is correctly addressed to the Tenants at the same address as the rental unit. I find that with this amendment, the Notice complies with section 52 of the Act.

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.

It is the Landlord's obligation to serve the Order of Possession on the Tenants. If the Tenants do 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.

The Tenants have two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 12, 2023 in accordance with the Notice.

Since the 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 Tenants are ordered to pay \$2,649.00 in unpaid rent to the Landlord.

As the Landlord testified they do not hold a security deposit, I make no order under section 38(4)(b) of the Act for the Landlord to retain the security deposit in partial satisfaction of the payment order.

A Monetary Order for the amount of outstanding rent is attached to this Decision and must be served on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

As the Tenants' Application was not successful they must bear the cost of the filing fee.

### Conclusion

**The Application is dismissed.**

The Landlord is issued an **Order of Possession**.

The Landlord is issued a **Monetary order**.

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 30, 2023

---

Residential Tenancy Branch