



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: CNC-MT  
Landlord: OPR, MNRL-S, MNDL-S, FFL

### **Introduction**

On December 7, 2022, the Tenant filed their Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”). They requested more time in which to file their Application, past the 10-day time limit after receiving the One-Month Notice on October 22, 2022.

On January 22, 2023 the Landlord applied for an order of possession of the rental unit, and compensation for unpaid rent amounts. Additionally, they applied for compensation for repairs to damage in the rental unit, and reimbursement of their Application filing fee. With the Tenant’s Application already in place, the Landlord’s Application was crossed to that of the Tenant concerning the same tenancy.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 14, 2023.

At the start of the hearing, the Landlord confirmed they received the Tenant’s Notice of Dispute Resolution Proceeding (generated from their Application at the Residential Tenancy Branch), directly when the Tenant delivered that to them in person.

The Tenant acknowledged service of the Landlord’s Notice of Dispute Resolution Proceeding, hearing information, and the Landlord’s evidence on January 23, 2023. They signed a statement to acknowledge this service.

Preliminary Matter – Tenant’s Application to cancel the One-Month Notice

The Landlord served the One-Month Notice to the Tenant by attaching it to the door of the rental unit on October 22, 2022.

The document as provided by the Tenant to the Residential Tenancy Branch for this hearing shows the clear information at the top of the document:

You have the right to dispute this Notice within 10 days of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office. . . If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

On their Application at the Residential Tenancy Branch on December 7, 2022 the Tenant indicated they needed more time to dispute the One-Month Notice.

Addressing this in the hearing, the Tenant stated they were trying to find a place to live after they received the One-Month Notice. Given the current housing shortage, they were unable to do so.

In regard to the tenant’s request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

In these circumstances, I find that the Tenant failed to prove conditions that prevented them from applying within the required timeline. I find the Tenant is not entitled to more time to dispute the One-Month Notice.

This One Month Notice was served on October 22, 2022. I deem service to have occurred three days after the Landlord attached the document to the Tenant’s door on that date, as per s. 90(c). This was October 25, 2022. The Tenant failed to apply for dispute resolution within the specified time limit of 10 days after they received it, by November 4, 2022. Furthermore, and as noted above I have found the tenant is not entitled to more time to dispute the 10-Day Notice. On this basis, I find the tenant is conclusively presumed under s. 47(5) of the *Act* to have accepted that the tenancy ended on the effective date on the One-Month Notice: November 30, 2022.

I dismiss the Tenant's Application, without leave to reapply. The remaining issues from the Landlord's Application are listed below.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, as per s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts owing, as per s. 55 of the *Act*?

Is the Landlord entitled to compensation for damage in the rental unit, as per s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, as per s. 72 of the *Act*?

### Background and Evidence

In their evidence, the Landlord provided a copy of the tenancy agreement between the parties, the details of which the Tenant confirmed in the hearing. Both parties signed the agreement on February 17, 2021. The tenancy started for a fixed term on March 1, 2021, ending February 28, 2022. The tenancy continued on a month-to-month basis after that fixed term. The Tenant paid \$1,000 per month on the 1<sup>st</sup> of each month. The agreement specifies the cost of added internet, at \$35 per month.

The Landlord issued the 10-Day Notice on January 11, 2023, in person to the Tenant, with the effective date for the Tenant to move out being January 21, 2023. The Landlord provided on page 2 that the Tenant was owing \$1,035, being the rent owing from January 1, 2023.

The Landlord provided a photo showing their in-person service of the 10-Day Notice to the Tenant on January 11, 2023.

In line with this 10-Day Notice, the Landlord seeks via their Application: an Order of Possession for unpaid rent; and monetary compensation for the rent amounts owing.

By the Landlord's account, the Tenant had not paid any rent for January and February 2023, making the amount owing to be \$2,070.

The Tenant did not file an Application for Dispute Resolution to dispute this 10-Day Notice within the 5-day timeline set out on the document. With service in person to the Tenant on January 11, 2023, their final date for an application was January 16, 2023.

In the hearing, the Landlord described an incident in which a guest of the Tenant damaged the rental unit and stole an item of the Landlord's property. This was the subject of the Landlord's service of the One-Month Notice, dealt with above. The incident occurred on October 21, 2022.

For the damages to the rental unit and the missing property, the Landlord provided photos in their evidence. The amount they claim for compensation is \$1,000. The Landlord stated they "ballparked" this figure, which means the amounts they specified were a rough estimate. They stated \$300 for the broken window, and at the time of the hearing the screens that were broken in the incident were not yet replaced. The Landlord paid \$2,000 for the item of personal property that was stolen.

### Analysis

The Landlord served this 10-Day Notice to the Tenant in person on January 11, 2023. The Tenant failed to apply for dispute resolution within the specified time limit of 5 days after they received it and did not pay rent by January 16, 2023. On this basis, I find the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date on the 10-Day Notice: January 21, 2023.

Stated thus, I uphold the Landlord's 10-Day Notice.

Under s. 55 of the *Act*, when an arbitrator upholds a landlord's notice and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

I find that the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. As per the 10-Day Notice, I grant the rent amount of \$1,035 with a

Monetary Order. As per the Landlord's evidence in the hearing, the Tenant did not pay rent for the following month of February. I therefore add February's rent to the Monetary Order: full rent amounts for \$1,035 each for January and February 2023. This amount is \$2,070.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I normally determine any amount of compensation that may be due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In regard to the incident of October 21, 2022, and the damage that ensued, I find the Landlord did not provide evidence showing the value of the damage or loss to them. This would normally take the form of invoices for work completed at their expense. In regard to their personal property, that could take the form of an original invoice for that purchase, or proof of the expenses of a similar or replacement item. Without such proof presented by the Landlord here, I dismiss this claim for compensation, with leave to reapply. I note that a landlord and tenant are obligated to inspect the condition of the rental unit at the end of a tenancy, and the security deposit is in place precisely for these situations.

Because the Landlord was successful in their Application, I add the amount of \$100 for reimbursement of the Application filing fee.

### Conclusion

For the above reasons regarding their late Application, I dismiss all parts of the Tenant's Application, without leave to reapply.

For the Landlord's Application, I grant an Order of Possession to the Landlord effective two days after they serve it upon the Tenant. I provide the Landlord with this Order of Possession in the above terms, and they must serve the Tenant this Order as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

As per s. 55(1.1) and s. 72, I grant the Landlord a Monetary Order in the amount of \$2,170 for compensation set out above and the recovery of the filing fee. I provide the Landlord with this Order and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: April 15, 2023

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Residential Tenancy Branch