



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC, CNR, OLC, LRE

### Introduction

A hearing was convened on January 05, 2023 in response to two Applications for Dispute Resolution filed by the Tenants and one Application for Dispute Resolution filed by the Landlord.

In one Application for Dispute Resolution the Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or tenancy agreement, and for an Order setting conditions on the Landlord's right to enter the rental unit.

In the second Application for Dispute Resolution the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and for an Order setting conditions on the Landlord's right to enter the rental unit.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession, a monetary Order for damage to the unit, a monetary Order for money owed or compensation for damage or loss, to retain the security, and to recover the fee for filing an Application for Dispute Resolution. The Tenant with the initials "PB" is the only party named as a Respondent on the Landlord's Application for Dispute Resolution. As such, any Order granted to the Landlord on the basis of the Landlord's Application for Dispute Resolution will only name "PB".

Service of documents was considered in my interim decision and will not be addressed in this final decision.

The hearing on January 05, 2023 was adjourned as there was insufficient time to consider all of the issues in dispute. The hearing was reconvened on May 02, 2023 and was concluded on that date.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter #1

The Tenant's application to cancel a One Month Notice to End Tenancy for Cause, the application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, and the application for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement were all decided in my interim decision of January 06, 2022. As such, those matters will not be addressed in this final decision.

The Landlord's application for an Order of Possession was also decided in my interim decision of January 06, 2022. As such, that matter will not be addressed in this final decision.

#### Preliminary Matter #2

At the hearing on May 02, 2023, the Agent for the Landlord applied to amend the Application for Dispute Resolution to include all rent/parking that is currently due. I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all the rent that is currently due, including unpaid rent/parking that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent/parking that is currently due.

### Issue(s) to be Decided

The only issue to be decided in this final decision is whether the Landlord is entitled to a monetary Order.

### Background and Evidence Presented on May 2, 2023

The Landlord is seeking compensation, in the amount of \$312.90, for reconnecting a heat detector in the rental unit. The Landlord submitted an invoice that indicates this expense was incurred.

The Agent for the Landlord stated that:

- in December of 2022 rent was \$908.42;
- rent was increased to \$926.58 effective January 01, 2022;
- the Tenants agreed to pay a \$70.00 monthly parking fee, due by the first day of each month'
- the Tenants did not pay \$359.20 of the rent that was due on December 01, 2022;
- the Tenants did not pay \$527.53 of the rent that was due on January 01, 2023;
- the Tenants did not pay \$996.58 of the rent that was due on February 01, 2023;
- the rental unit was vacated on April 18, 2023;
- the Tenants did not pay \$282.53 of the pro-rated rent that was due up to April 18, 2023;
- they did not pay any parking fee for April 18, 2023;
- the Tenants did not pay rent, in full, when it was due on December 01, 2022, January 01, 2023, February 01, 2023, March 01, 2023, and April 01, 2023.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In my interim decision of January 06, 2023, I concluded that a heat detector in the rental

unit was disconnected due to the actions of the Tenant and/or his guest. Regardless of whether the heat detector was intentionally or accidentally disconnected, I find that the Tenant is obligated to reconnect the heat detector, pursuant to section 32(3) of the *Act*. I therefore find that the Tenant must pay the Landlord \$312.90 for the cost of reconnecting the heat detector.

Section 26 of the *Act* requires a tenant to pay rent when it is due. As the Tenants were living in the rental unit on December 01, 2022 and January 01, 2023, I find that they were obligated to pay the rent that was due on those months. On the basis of the undisputed evidence, I find that the Tenants have failed to pay \$359.20 of the rent/parking that was due on December 01, 2022 and \$527.53 of the rent/parking that was due on January 01, 2023. I therefore find that they must pay \$886.73 in outstanding rent/parking for those months.

As the Tenant did not vacate the rental unit on January 31, 2023 in accordance with the Order of Possession granted to the Landlord, I find that the Tenants are obligated to pay “overholding” rent/parking, on a per diem basis, for the days they remained in possession of the rental unit.

On the basis of the undisputed evidence, I find that the Tenants still owe \$996.58 in “overholding” rent/parking for February of 2023, pro-rated rent of \$282.53 for April of 2023, and pro-rated parking of \$42.00 for April of 2023. On the basis of the undisputed evidence that they remained in the unit until April 18, 2023, I find that the Tenants must pay outstanding “overholding” rent/parking of \$1,321.11 for the period between February 01, 2023 and April 18, 2023.

In the tenancy agreement, which was submitted in evidence, the Tenants agreed to pay a fee of \$25.00 whenever they are late paying rent.

As the Tenants did not pay rent when it was due on December 01, 2022 and January 01, 2023, I find that the Tenants must pay late fees of \$50.00 for those two months.

As the rent that was due for the period between February 01, 2023 and April 18, 2023 was “overholding” rent, the Tenants were not obligated to pay that rent by the first day of each month. I therefore find that the Landlord is not entitled to late fees for those months, as the “overholding” rent was not “late”.

I find that the Landlord’s Application for Dispute Resolution has merit and that the

Landlord is entitled to recover the cost of filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,670.44, which includes \$2,207.84 in unpaid rent/parking, \$50.00 for late fees, \$312.60 for reconnecting a heat detector, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$2,670.44. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 02, 2023

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Residential Tenancy Branch