



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Century 21 ] and [tenant name  
suppressed to protect privacy]

## **DECISION**

### Dispute Codes

CNR, CNC-MT  
OPC, MNRL-S, FFL

### Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The tenant applied for:

- cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”), pursuant to section 46; and,
- cancellation of the landlord’s One Month Notice and an extension of the time limit to dispute the One Month Notice pursuant to section 47.

The landlord applied for:

- an Order of Possession based on a One Month Notice to End Tenancy for cause, pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67 of the Act; and,
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

### Preliminary Issue – Settlement

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 the parties discussed the issues between them, turned their minds to compromise and achieved a partial resolution of their dispute.

Both parties agreed to the following final and binding settlement of some of the issues currently under dispute at this time:

1. This tenancy is ended by way of a mutual agreement and not pursuant to the 10-day Notice or the One-Month Notice.
2. The tenant will vacate the rental unit on or before May 1, 2023, not later than 11:00 a.m.
3. Both parties acknowledged that this settlement agreement constitutes a final and binding resolution of a portion of the tenants' applications before me today and does not prejudice any future applications that may be brought by either party

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.

#### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the landlord and tenant entered into a written tenancy agreement starting May 3, 2021. Monthly rent is \$1,116.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$550.00, which the landlord continues to hold in trust for the tenant.

RR testified that the landlord has issued 13 10-Day Notice to the tenant during the tenancy. RR testified that throughout the tenancy, they had hoped to work with the tenant; however, the tenant did not follow through on the payment plans. RR directed my attention to the document titled Tenant Statement which is included in their evidence and details the tenants' rental arrears. RR testified that rent is outstanding for five months (December 2022 to April 2023).

The landlord is seeking a Monetary Order to recover the outstanding rent.

The tenant testified that they paid rent in the amount of \$1,000.00 in the month of December 2022; however, they have been withholding rent for the last four months. The tenant testified that the total amount of rent outstanding is equivalent to five months rent but that is because rent was outstanding prior to December 2022 when they made the payment of \$1,000.00.

The tenant testified that they withheld rent because they do not believe they should be required to pay given what they went through in the building. The tenant stated that they should have made a monetary claim, taken pictures, and obtained witness statements; however, they did not because they just want out of the building.

The tenant stated that the rental unit was in appalling condition when they moved into the building, and it took them seven days to clean it. The tenant submitted that there are drug addicts in the building, and he believes a murder or drug overdoses happened in the building. The tenant testified that the whole property is full of drug addicts and high-risk individuals and the landlord knows this. The tenant feared that the building was going to burn down.

The tenant drew my attention to their statement which is submitted into evidence and details the condition of their rental unit upon moving in and their concerns during the tenancy.

### Analysis

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

There are six lawful reasons for a tenant to withhold rent under the Act.

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

The tenant submitted they withheld rent because of what they went through in the building. I have considered the tenant's oral testimony and written evidence and while they may have valid concerns, they have not established any of the lawful reasons to withhold rent under the Act. On that basis, I find in favour of the landlord and grant a Monetary Order for unpaid rent.

The landlord applied for a Monetary Order based on the Tenant Statement that is included in their evidence. The Tenant Statement indicates that as of February 7, 2023, the tenant's rental arrears amounted to \$3,032.00. Included in this ledger are late fees charged on four occasions for a total of \$100.00. The landlord is not entitled to recovery of the late fees and therefore they have been deducted from the total arrears and I find that on February 7, 2023, the tenant owed the landlord \$2,932.00 in unpaid rent.

The parties agreed that the tenant did not pay rent in the amount of \$1,116.00 for the month of March or \$1,116.00 for the month of April 2023. The addition of these two months to the amounts listed on Tenant Statement bring the total amount of rent outstanding to \$5,164.00.

Based on the Tenant Statement and the oral testimony of the parties, I find that the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,164.00.

As the landlord was partially successful in their application, I find that they are entitled to recovery of the filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$550.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security and pet deposit in partial satisfaction of the monetary orders.

### 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 landlord, which is to take effect not later than 11:00 a.m. on May 1, 2023. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlord's favour in the amount of \$4,714.00 as follows:

Item	Amount
Rent due up to and including Feb 7, 2023 (Tenant Statement)	\$2,932.00
Rent due (March and April 2023) 2 x \$1,116.00	\$2,232.00
Filing Fee	\$100.00
Security Deposit	-\$550.00
<b>Total Monetary Order</b>	<b>\$4,714.00</b>

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 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: May 3, 2023

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Residential Tenancy Branch