



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding Take Root Metrotown Properties
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord)	910098134 910100235	OPL-4M, FFL OPR-DR, MNR-DR, FFL
(Tenant)	910099151	CNR, DRI, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord applied for:

- an order of possession further to having served the Tenant with a Four Month Notice to End the Tenancy for Demolition dated August 28, 2022 (“Four Month Notice”);
- an order of possession for unpaid rent, further to having served a 10 Day Notice to end Tenancy for Unpaid Rent dated January 21, 2023 (“10 Day Notice”); and
- recovery of their \$100.00 application filing fees;

The Tenant applied:

- for an Order to cancel the 10 Day Notice;
- to dispute a rent increase from the Landlord; and
- for recovery of the \$100.00 application filing fee.

The Tenant and three agents for the Landlord (the “Agents”) appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenant and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties’ provided their respective email addresses in their applications, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Tenant was disruptive during the hearing, talking over me, and swearing frequently. In order to maintain an efficient hearing and to get through the Parties’ issues without having to adjourn and reconvene at a later date, I muted the Tenant when it was the Landlord’s turn to testify. Muting was also necessary when the Tenant would not answer my questions and would speak over top of me. The Tenant said that he has a PTSD disability, which contributes to this behaviour. I tried to be sensitive to his condition, while conducting an administratively fair and effective hearing. The Tenant provided a doctor’s note, which states:

May 04, 2023

To whom it may concern,

I hereby certify that [the Tenant] is experiencing emotional, psychological conditions. He is unstable to deal with any stress and anxiety for the next 3 months.

[Doctor’s name, signature, address, telephone number]

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss

unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a 10 Day Notice. I find that not all the claims on the Application are sufficiently related to be determined during this one-hour proceeding. I will, therefore, only consider the Tenant's request to set aside the 10 Day Notice and the recovery of his filing fee at this proceeding. Therefore, the Tenant's other claim is dismissed, without leave to re-apply, given the outcome of this hearing.

Issue(s) to be Decided

- Should the Four Month Notice be cancelled or confirmed?
- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of their Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 15, 2005, with a final monthly rent of \$1,095.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$482.50, and no pet damage deposit.

#1 FOUR MONTH NOTICE

The Landlord submitted a copy of the Four Month Notice, which we reviewed in the hearing. The Agent confirmed that the Four Month Notice was signed and dated August 28, 2022, and that it has the rental unit address. It was served by being posted on the rental unit door on August 28, 2022, with an effective vacancy date of December 31, 2022. The Four Month Notice was served on the grounds that the Landlord is going to demolish the rental unit, and the Landlord had obtained the needed permits and approvals for the demolition, before serving the Four Month Notice. The Agent said that it is still the Landlord's intention to demolish the building, and that the Tenant is the last tenant remaining in the residential property.

The Agent said that the owner intends to redevelop the site and that the Four Month Notice was served as notice of the planned demolition and the need to end the tenancies for all 12 tenants in the residential property. This Tenant is the last to move out.

In the hearing, the Agent said:

[The Tenant] was provided with help finding new housing. We sent him several housing options, but he declined them all. He would pay the same rent and if he found it elsewhere – there was a maximum allowable rate and assistance securing housing, but he's not there, because he declined all options. He had enough time to go look for housing. He was responsible for his own housing, but top up was the responsibility of the Landlord – topping up the rent above his current rate to the maximum level.

Beyond that we offered him one properly across the street to relocate him there. He marked [the tenancy agreement] all up; he didn't agree with the standard terms, even though they were the standard terms of RTB. Parking and a storage locker was additional, and he indicated it was included. He could go month to month, but he was told it was to be redeveloped in two years. He declined.

It didn't go anywhere. We tried to make it work, but it went – well, the Tenant started putting stuff on [a social media site] and abusing managers. There was another agreement, and he was required to apply for the unit, but he didn't apply. The Landlord made every attempt to assist him; he's the last person in the building. And he's threatening. And we feel threatened. He's verbally abusive, makes racist remarks.

The Tenant's comments included:

I was supposed to move into a secured housing option on November 1st. I have requested a moving van to move into that suite. I'm here beyond my control.

I asked the Tenant why he rejected the rental units offered him, and he said: "They changed the contract to claw back the rent top up - the rent was in error by \$1.00. Literally a dollar."

The Tenant claimed that his rent should be \$1,095.00, but the tenancy agreement of the new place had a rent of \$1,096.00, so he would not sign it, even though he was told it would be corrected.

The Tenant continued:

I am here because [the Landlord] screwed up my lease for where I was going to

move to. [S.] of [another unit] has her top up. I'm in the same circumstance to not get my top up. They are trying to steal my top up. If the lease had been correct, I'd have signed that lease November 3rd. It would be legally binding. It was off by a dollar. My roommates we had our lives planned for that place, but they screwed up the lease. [The Landlord] told me you were waiting for an update. \$2,200 is my top up rate. It's the number – I'm the only one to not get their top up. That's the issue. If the lease had been \$1,095.00 and not \$1,096.00, I would have signed it and sent it back. Had I signed it November 3rd, it would be legal.

The Agents said:

We have been told to accommodate him the best we could, but now he left us no choice. We need that unit. In fact, he's holding up the redevelopment process. We advised him in July that this was happening. Also, his two roommates moved - he could have moved out with them. But he's also abusive. and we get so many belligerent emails from him. If anyone is walking by the building, he starts swearing at them, too. It's not a good fit. We have kept everything on for him in the building, since he is the only one in there.

The last [rent] payment he submitted was on October 3, [2022]. He hasn't paid since then. Aside from the abuse, I've relocated all tenants in three different buildings. My instruction was to accommodate these people, so they're moved and happy and that's what I have to say. Emails he's posted are very abusive.

#2 10 DAY NOTICE

The 10 Day Notice was signed and dated January 21, 2023, and it has the rental unit address. It was served by attaching a copy to the rental unit door on January 21, 2023, with an effective vacancy date of February 3, 2023, and it was served on the grounds that the Tenant failed to pay \$3,285.00 in rent owed to the Landlord on January 1, 2023.

The Tenant disputed the 10 Day Notice with his application to the RTB.

The Agents said that the Tenant has not paid any rent since October 2022. However, given that he was served with a Four Month Notice, the last month is free to the Tenant, pursuant to the Act. As such, December was supposed to be the last month of the tenancy, pursuant to the Four Month Notice, and therefore, I find that this month is free to the Tenant.

Further, the Agents said that the Landlord has agreed that the Tenant may pay \$1,095.00, rather than \$1,096.00 per month. The amounts owed by the Tenant to the Landlord are set out in the following table:

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Nov 2022	\$1,0965.00	\$0.00	\$1,095.00
Dec 2022	\$1,096.00	\$0.00	\$1,095.00
Jan 2023	\$1,0965.00	\$0.00	\$1,095.00
Feb 2023	\$1,0965.00	\$0.00	\$1,095.00
Mar 2023	\$1,0965.00	\$0.00	\$1,095.00
Apr 2023	\$1,0965.00	\$0.00	\$1,095.00
May 2023	\$1,0965.00	\$0.00	\$1,095.00
	Total Owing		\$6,570.00

In terms of why he has not paid rent, the Tenant said:

November is the last month, because I was supposed to move into my suite. I never received the rent increase. The only rent increase is the \$1,095.00 – he said he'll fixed the lease to this amount. But the lease for the new suite was off by a dollar. And I was promised the new lease with the free parking and the storage.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 FOUR MONTH NOTICE

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Four Month Notice on August 31, 2022, three days after it was posted to the door of the rental unit.

Section 49 (9) of the Act states that if a tenant who has received a Four Month Notice

does not apply for dispute resolution within 30 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As there is no evidence before me that the Tenant disputed the Four Month Notice, I find that he is conclusively presumed under section 49 (9) of the Act to have accepted the Four Month Notice, and I find that the tenancy, therefore, ended on December 31, 2022. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act. I, therefore, **award the Landlord with an Order of Possession** of the rental unit. As the effective date has passed and the Agent testified that rent has not been paid since October 2022, the Order of Possession will therefore be **effective two days after service** on the Tenant.

#2 10 DAY NOTICE

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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;

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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 is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord, except for December 2022, the last month of the Four Month Notice.

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy, as I find the Tenant did not have a right to not pay rent, as he has done. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to section 55 (1.1) and the Tenants' Application. Based on the evidence before me in this matter, I **award the Landlord with \$6,570.00** from the Tenant in unpaid rent, pursuant to sections 26, 55 and 67 of the Act.

Summary and Off Set

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$482.50** security deposit in partial satisfaction of the Landlord's monetary awards.

Given their success, I award the Landlord with recovery of their **\$100.00** filing fee pursuant to section 72 of the Act. However, the Landlord is awarded the recovery of only one of their filing fees, because they could have amended the first application, rather than paying another \$100.00 Application filing fee for their other claims.

The Landlord is authorized to retain the Tenant's \$482.50 security deposit in partial satisfaction of the monetary awards, pursuant to section 72 of the Act.

\$6,570.00	-unpaid rent award;
<u>\$ 100.00</u>	-Application filing fee awarded;
<u>\$ 482.50</u>	-less security deposit;
<u>\$6,187.50</u>	-Monetary Order.

I grant the Landlord a **Monetary Order** of **\$6,187.50** for the remaining amount owing on the monetary awards, after the security deposit is deducted, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful and the Tenant is unsuccessful in their respective applications, as the Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenant's application is dismissed wholly without leave to reapply, as the tenancy is ending.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Landlord is awarded **\$6,670.00** from the Tenant in unpaid rent owing and recovery of one of the Landlord's **\$100.00** Application filing fee. The Landlord is authorized to

retain the Tenant's **\$482.50** security deposit in partial satisfaction of the monetary awards. I grant the Landlord a **Monetary Order** of **\$6,187.50** from the Tenant for the remaining amount of the monetary awards owing to the Landlord.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 12, 2023

Residential Tenancy Branch