



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Ivanhoe Hotel  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNRT, MNDCT, DRI, RR, AAT, PSF, LRE, LAT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") for the following orders:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46 and 55;
- a monetary order for the cost of emergency repairs to the manufactured home site pursuant to sections 33 and 67;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order regarding the tenant's dispute of a rent increase by the landlord pursuant to section 41;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65;
- an order to allow access to or from the rental unit for the tenant or the tenant's guests pursuant to sections 30 and 62;
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f);
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70(1);
- authorization to change the locks to the rental unit pursuant to section 70(2);
- and,
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

RC (the "landlord") and EC (the "tenant") appeared at the hearing.

While the parties could not agree on a date, they confirmed that the landlord was served with the Notice of Dispute Resolution Proceeding and the tenant's evidence.

The landlord testified that they served the tenant with their evidence in response to the tenant's application on April 13, 2023, in person. The landlord testified that they recall the date because they were waiting for a letter from JO which they received on April 13<sup>th</sup> and included in the package of evidence they served on the tenant. The landlord testified that a witness, DP, observed them serve the tenant.

The tenant denied that they were served with the landlord's evidence.

I have considered the submissions of both parties, and I find the landlord's detailed evidence surrounding when, how, and with whom they served the tenant with their evidence more persuasive than the tenant's denial of the same. On that basis, I find that the tenant was served with the landlord's evidence on April 13, 2023.

Based on the foregoing, I find pursuant to sections 88 and 89 of the Act, that both parties were served with the other's parties materials.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The tenant applied for several orders in addition to cancellation of the 10-Day Notice. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, I find the most important issue to determine is whether or not the 10-Day Notice should be cancelled. I find the tenant's additional claims are unrelated to this issue. I have addressed my findings regarding the tenant's additional claims below under the heading "Conclusion".

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

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 entered into a written tenancy agreement starting January 13, 2023. Monthly rent is \$650.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$300.00, which the landlord continues to hold in trust for the tenant. The Tenancy Agreement is submitted into evidence.

The landlord testified that they served the tenant with the 10-Day Notice for unpaid rent. The 10-day Notice was signed on March 6, 2023. The landlord testified that they served the tenant with the 10-Day Notice by leaving a copy in the tenant's box and by attaching a copy to the door of the rental unit. The landlord was unable to locate the date of service. The tenant testified that they received the 10-Day Notice on March 7<sup>th</sup>, 2023, when they located it attached to the door of their rental unit.

Page two of the Notice indicates that the tenant did not pay rent in the amount of \$650.00 that was due on March 1, 2023. All pages of the Notice were served and submitted into evidence. The tenant disputed the Notice.

The landlord testified that since the Notice was issued the tenant has not paid rent for April or May 2023. The landlord is seeking an order of possession and a monetary order in the amount of \$1,950.00.

The tenant did not dispute that they have not paid rent. Rather, the tenant testified that they did not pay rent because the landlord did not give them the room they were promised. The tenant testified that the room they are currently in was meant to be a temporary room. It is very small and does not have an outside window. The tenant testified that \$650.00 is too much for them to pay for that room.

The landlord testified that the tenant and his worker were aware from the outset of the tenancy that they would be provided with another room with an outside window when one came available. The landlord testified that they have a waitlist for these rooms and that the tenant was required to wait their turn.

### 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's evidence is that they withheld rent because the landlord promised to move them from their temporary room to a more suitable room; however, the landlord did not follow through with this promise.

The Tenancy Agreement which is submitted into evidence is for a one-year term and relates to the tenant's current room. While there may have been an agreement between the parties that the tenant would be moved to a more suitable room when one came available, I find this is inconsequential to the tenant's responsibility to pay rent in accordance with the Tenancy Agreement. Ultimately, I find that the tenant has not established any of the lawful reasons to withhold rent under the Act.

The undisputed evidence shows that the tenant did not pay rent for March, April, or May 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the

form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

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 and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

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 tenant is ordered to pay \$1,950.00 in unpaid rent to the landlord.

The landlord continues to hold the tenant's security deposit of **\$300.00** 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 deposit in partial satisfaction of the monetary order.

### Conclusion

The tenant's application pursuant to section 46 of the Act is dismissed without leave to reapply.

The tenant's additional applications are dismissed with leave to reapply.

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in 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 \$\$1,650.00 as follows:

Item	Amount
Rent outstanding for March, April, May 2023 (3 x \$650.00)	\$1,950.00
Security Deposit	(-\$300.00)
<b>Total Monetary Order</b>	<b>\$1,650.00</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 09, 2023

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Residential Tenancy Branch