



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

Tenant: CNR, MNRT, MNDCT, DRI, RR, FFT;  
CNC, MNRT, MNDCT, DRI, RR, RP, OLC, FFT  
Landlords: OPR-DR

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear applications regarding a tenancy. This reconvened hearing dealt with crossed applications for dispute resolution.

On September 6, 2022, the landlord applied for:

- an order of possession, having served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 23, 2022 (the 10 Day Notice).

On September 8, 2022, the tenant applied for:

- an order cancelling the 10 Day Notice; and
- recovery of the filing fee.

On December 7, 2022, the tenant applied for:

- an order cancelling a One Month Notice for Cause, dated November 24, 2022 (the One Month Notice);
- compensation for emergency repairs the tenant made during the tenancy;
- compensation for monetary loss or other money owed;
- dispute of a rent increase above the amount allowed by law;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- repairs made to the unit or property, having contacted the landlord in writing;
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

On January 6, 2023 the tenant amended their application, seeking:

- compensation for monetary loss or other money owed;
- compensation for emergency repairs the tenant made during the tenancy;
- dispute of a rent increase above the amount allowed by law; and

- a rent reduction for repairs, services, or facilities agreed upon but not provided.

This hearing was reconvened after being adjourned on January 26 and February 24, 2023. This decision should be read in conjunction with the Interim Decisions issued on January 26 and March 03, 2023.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matters

#### *Dismissal of claims*

The tenant amended their application, seeking \$7,200.00 in compensation for emergency repairs they made during the tenancy. The amendment form prompts the applicant to describe why they want to amend the application, and to attach a Monetary Order Worksheet. The tenant's amendment application does not explain how the tenant came to the amount of \$7,200.00, and no Monetary Order Worksheet is in evidence. Section 59(2)(b) of the Act states that an application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Procedural fairness demands that a respondent is made aware of the details of the claims against them so they can prepare accordingly. As the tenant confirmed there was nothing in the tenant's documentary evidence that clearly itemizes the emergency repairs the tenant made and how much they paid, I dismiss this claim with leave to reapply.

The Residential Tenancy Branch's Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's claims for compensation for monetary loss or other money owed; a rent reduction for repairs, services, or facilities agreed upon but not provided; repairs made to the unit or property, having contacted the landlord in

writing; and an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

### *Amendment of landlord's application*

On January 5, 2023, the landlord uploaded an amendment form, but did not submit it to the Residential Tenancy Branch for processing. The landlord sought to amend their application to recover \$19,977.50 in unpaid rent from 2018 to 2022. As the tenant confirmed he received the landlord's amendment form, I amend the landlord's application to include this claim.

### Issues to be Decided

- 1) Has the landlord increased the rent above the amount allowed by law?
- 2) Is the tenant entitled to an order cancelling the 10 Day Notice? If not, is the landlord entitled to an order of possession and unpaid rent?
- 3) Is the tenant entitled to an order cancelling the One Month Notice? If not, is the landlord entitled to an order of possession?
- 4) Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

While I have considered the presented 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 the most recent tenancy agreement began February 1, 2015 and rent is currently \$2,030.00.

The landlord testified that rent is due on the first of the month. The tenant testified that rent did not have to be paid on the first of the month – that it was okay to pay rent at any point in the month. The tenancy agreement states that rent is due on the first of the month.

The landlord testified the tenant paid a security deposit of \$900.00 or \$950.00; the tenant testified he thought he paid a security deposit of \$950.00. The tenancy

agreement does not record an amount for the security deposit. The landlord confirmed they still hold the security deposit.

*Dispute of rent increase*

The tenant's December application indicates they seek to recover \$4,900.00 due to a \$100.00 rent increase on May 1, 2018. The tenant submitted: "An email stated it would be so and we did not know that this was illegal." The tenant's application indicates that a subsequent rent increase of \$30.00 should be null and void as it was calculated based on the rent resulting from the May 1, 2018 increase.

The tenant's January amendment form indicates they seek an amount of \$5,700.00 for this claim, but provides no explanation for the increased amount sought. The amendment form refers to the tenant renting a two-bedroom unit, which the landlord illegally modified from a one-bedroom unit.

The tenant presented as evidence an email string between the parties, dated March 5, 2018, in which the landlord indicates they would like to increase the rent to \$2,000.00 a month, starting May 1, 2018. The landlord states that they understand that the tenant may need to discuss the matter with someone else. The tenant's response was: "No need to discuss. No problem," then the tenant wrote further regarding a different matter.

The landlord submitted that the rent was increased by \$100.00 in 2018 by mutual agreement, and directed me to the same email string in support.

A Residential Tenancy Branch *Notice of Rent Increase* form dated "09/12/2021" in date/month/year format is submitted as evidence and states that the rent will increase from \$2,000.00 to \$2,030.00 on March 2, 2022. The tenant submitted that the 2022 increase should have been calculated on \$1,900.00, not \$2,000.00.

The landlord submitted this was a legal increase, sent three months prior, and directed me to an email in evidence from the tenant, dated February 1, 2022, in which the tenant wrote to the landlord that the tenant received the rent increase form "4 months prior to March or even before that," and that the tenant understands the rent will increase the next month.

*Dispute of 10 Day Notice*

The landlord testified they served the 10 Day Notice on the tenant by registered mail on August 23, 2022, and provided a tracking number as recorded on the cover page of the decision.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form. The Notice states the tenancy is ending as the tenant has failed to pay rent in the amount of \$2,030.00, due on August 3, 2022. The landlord stated that date was an error and that the Notice should have stated the rent was due on August 1, 2022.

The parties agreed the tenant made rent payments as follows:

Month	Rent due	Rent paid	Monthly outstanding
August 2022	\$2,030.00	\$1,850.00	\$180.00
September 2022	\$2,030.00	\$0.00	\$2,030.00
October 2022	\$2,030.00	\$0.00	\$2,030.00
November 2022	\$2,030.00	\$0.00	\$2,030.00
December 2022	\$2,030.00	\$0.00	\$2,030.00
January 2023	\$2,030.00	\$0.00	\$2,030.00
February 2023	\$2,030.00	\$0.00	\$2,030.00
March 2023	\$2,030.00	\$0.00	\$2,030.00
April 2023	\$2,030.00	\$0.00	\$2,030.00
Total			\$16,420.00

The landlord provided additional testimony on earlier outstanding rent amounts, stating that the landlord had repeatedly demanded payment.

The landlord submitted a Monetary Order Worksheet, including outstanding rent amounts for 2018, 2019, 2020, 2021, and 2022 prior to August 2022. The landlord confirmed they did not serve the tenant a 10 Day Notice for these outstanding amounts.

I asked the landlord why they had permitted outstanding rent to accrue since 2018. The landlord submitted that they did not know the amount of outstanding rent until they gathered the evidence regarding the dispute of the 10 Day Notice.

Submitted as evidence is an email dated January 13, 2022, from the landlord to the tenant, in which the landlord states: "I'm not sure how much outstanding rent there is."

The landlord submitted they had initially not wanted to pursue the earlier unpaid rent, but did so because the tenant claimed he had a right to withhold rent. The landlord submitted they had initially sought to recover only the August 2022 rent.

The tenant testified the prior rent had been paid in full, directing me to emails dated June 15 and July 11. Having reviewed all of the evidence submitted by both parties, I have not found emails indicating that rent owing prior to August 2022 has been paid in full. However, submitted is an email string between the parties from June and July 2022 discussing outstanding rent, a rent payment plan, and the parties' dispute about alterations and repairs made to the unit by the tenant without the landlord's approval.

The tenant provided extensive testimony on how COVID had impacted their business and therefore their ability to pay rent, how they had managed to pay back a large rent arrears amount, how they had done their best to meet the landlord's demands, that the landlord has made unsubstantiated claims and ruined the tenants' lives, that the landlord had rented them a one-bedroom unit rather than a two-bedroom unit, that the landlord owes the tenant money for appliances and emergency repairs, that the landlord did not complete repairs to the unit, and that all rent owing prior to August 2022 has been paid.

### *Dispute of One Month Notice*

The parties each provided testimony regarding the One Month Notice.

### Analysis

#### *Dispute of rent increase*

The tenant seeks to recover an amount paid due to a 2018 rent increase in contravention of the Act, and a subsequent increase, which they state is invalid as it is impacted by the 2018 increase.

Both parties referred me to an email string between the parties in which the landlord indicates they would like to increase the rent to \$2,000.00 a month, starting May 1, 2018. The landlord states that they understand that the tenant may need to discuss the matter with someone else. The tenant's response was: "No need to discuss. No problem."

Section 43(1)(c) states that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing.

Based on the documentary evidence before me, I find the parties mutually agreed, in writing, to increase the rent \$100.00, from \$1,900.00 to \$2,000.00, effective May 1, 2018.

The *Notice of Rent Increase* form submitted as evidence states that the rent will increase from \$2,000.00 to \$2,030.00 on March 2, 2022. The rent increase limit for 2022 was 1.5 percent, which in this case was \$30.00.

Section 42 provides that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies: (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit; or (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with the Act. Section 42 also states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase, and that a notice of a rent increase must be in the approved form.

The *Notice of Rent Increase* form was dated "09/12/2021" in date/month/year format, apparently indicating it was signed December 9, 2021, for an increase on March 2, 2022, which would provide less than the required three months notice. The landlord submitted this was a legal increase, sent three months prior. Neither party clarified when the form was signed, if it was dated incorrectly, when and how it was served on the tenant, or why the effective date was March 2 and not the first of the month, when rent was due under the written tenancy agreement. The landlord presented an email in evidence in which the tenant wrote to the landlord that the tenant received the rent increase form at least four months prior to March, if not more. Based on the tenant's written statement, I find that the tenant was served the rent increase form more than three months prior to the March 2022 increase, as required by section 42 of the Act.

Based on the preceding findings and evidence, and on a balance of probabilities, I find the March 2022 rent increase was implemented in accordance with the Act. Therefore, I find the tenant was not entitled to withhold rent and is not entitled to a monetary award for this claim.

#### *Dispute of 10 Day Notice*

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, pay the overdue rent, in which case the notice has no effect, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Based on the landlord's documentary evidence, I find the 10 Day Notice was served on August 23, 2022, in accordance with section 88 of the Act, and deem it received by the tenant on August 28, 2022, pursuant to section 90 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

I find that the tenant failed to pay the overdue rent or file an application for dispute resolution within 5 days of August 28, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, September 7, 2022, and must vacate the rental unit.



The parties agreed the tenant paid rent as follows:

Month	Rent due	Rent paid	Monthly outstanding
August 2022	\$2,030.00	\$1,850.00	\$180.00
September 2022	\$2,030.00	\$0.00	\$2,030.00
October 2022	\$2,030.00	\$0.00	\$2,030.00
November 2022	\$2,030.00	\$0.00	\$2,030.00
December 2022	\$2,030.00	\$0.00	\$2,030.00
January 2023	\$2,030.00	\$0.00	\$2,030.00
February 2023	\$2,030.00	\$0.00	\$2,030.00
March 2023	\$2,030.00	\$0.00	\$2,030.00
April 2023	\$2,030.00	\$0.00	\$2,030.00
Total			\$16,420.00

In accordance with section 55 of the Act, I find that the landlord is entitled to an order of possession and a monetary award for outstanding rent in the amount of \$16,420.00.

The landlord testified they did not previously serve a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant, and allowed outstanding rent to accrue since 2018 because they did not know how much rent was outstanding. I decline to consider any previous rent owing, as I find that by permitting the arrears to accumulate for such an extended period without keeping track of the amount owed and taking action, the landlord implicitly waived their right to recover the past unpaid rent.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the final date of the hearing, April 14, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is unsuccessful in their application, I decline to award them the filing fee.

As the landlord testified the tenant paid a security deposit of \$900.00 or \$950.00, and the tenant testified he thought he paid a security deposit of \$950.00, I find the tenant paid a security deposit of \$950.00.

In accordance with section 72, I allow the landlord to retain \$950.00 of the tenant's security deposit in partial satisfaction of the monetary award.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$16,420.00
Less the security deposit	-\$950.00
<b>Owed to landlord</b>	<b>\$15,470.00</b>

### *Dispute of One Month Notice*

As the tenancy has ended I find it unnecessary to consider the One Month Notice.

### Conclusion

The tenant's applications are dismissed.

The landlord is granted an order of possession which will be effective two days after it is received by the tenant. The order of possession must be served on the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$15,470.00 for unpaid rent. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 02, 2023

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Residential Tenancy Branch