



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

File #910096621: CNR, MNDCT, OLC, FFT

File #910098143: OPR, MNRL, FFL

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on December 19, 2023;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

The Landlords file their own application seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

P.L. appeared as the Tenant. S.W. appeared as the Landlord. C.F. and N.T. appeared as the Landlord’s agents. J.W. appeared as the Landlord’s translator. D.J. appeared initially as a witness for the Landlord but was not called and did not provide evidence.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

### Preliminary Issue – Tenant's Claims

The Tenant seeks various relief in his application. Rule 2.3 of the Rules of Procedure requires claims in an application to be related to each other. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The main issue in dispute in both applications is whether the 10-Day Notice is enforceable. Review of the Tenant's application shows the claims under ss. 67 (monetary compensation) and 62 (order that the Landlord comply) are tied to a dispute regarding an alleged mould issue. I find that this is not sufficiently related to the issue of whether the 10-Day Notice for unpaid rent is enforceable. Accordingly, I sever these two claims pursuant to Rule 2.3 of the Rules of Procedure.

The Tenant's claim under s. 67 of the *Act* for monetary compensation is dismissed with leave to reapply. The claim under s. 62 of the *Act* is only relevant should the tenancy continue. Depending on the outcome of this matter, the claim under s. 62 of the *Act* that the Landlord comply may be dismissed with or without leave to reapply.

The hearing proceeded strictly on the issue of the enforceability of the 10-Day Notice and unpaid rent.

### Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) Is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is either party entitled to their filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in September 2019.
- Rent of \$3,995.00 is due on the second day of each month.
- The Tenant paid a security deposit of \$1,997.50 and a pet damage deposit of \$1,997.50 to the Landlords.

I am provided with a copy of the tenancy agreement, which lists rent is due on the first day of each month.

### *Enforceability of the 10-Day Notice*

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

The Landlord's agent C.F. advises that the 10-Day Notice was served via registered mail sent to the Tenant on December 19, 2022. The Landlord's agent further advises that due to inclement weather the Tenant did not receive the 10-Day Notice until December 31, 2022. The Tenant acknowledges receiving the 10-Day Notice on December 31, 2022.

I find that the 10-Day Notice was served on the Tenant in accordance with s. 88 of the *Act*. I decline to apply the deemed receipt provisions under s. 90 of the *Act* as it would be unfair to do so given the registered mail package was delayed due to inclement weather. I accept that the Tenant received the 10-Day Notice on December 31, 2023.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice provided to me and I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date is incorrect, though I find that this is not relevant as it is automatically corrected to January 10, 2023 by application of s. 53 of the *Act*.

The Landlord's agent C.F. advises that the 10-Day Notice was served after the Tenant failed to pay rent in December 2022. I am further told that the Tenant did not pay rent in January 2023, February 2023, March 2023, April 2023, and May 2023.

The Tenant confirms that he has not paid rent for December 2022 onwards and explained that he did not pay rent due to there being an unresolved mould issue in the rental unit. The Tenant explains that a water leak in September 2020 created a mould issue that was not remediated until October 2022. The Tenant further tells me that various health issues resulted from this. The Landlord's agent refutes the Tenant's allegations regarding mould.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* establishes a limited set of circumstances in which a tenant may deduct money from rent, including:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

In this instance, I enquired with the Tenant whether he paid for any of the repairs. The Tenant advises that he did not but had paid for mould inspections, the cost of which he deducted from rent owed in October 2022. In the Tenant's telling, he withheld rent from

the Landlord due to the ongoing mould contamination within the rental unit and his belongings.

A tenant's obligation to pay rent, as set out under s. 26(1) of the *Act*, is quite clear. They must pay rent and they must do so even where a landlord is in breach of the *Act*. In this instance, even if it were true that the Landlords breached their obligation to maintain and repair the rental unit under s. 32 of the *Act*, the Tenant was still expected to pay rent. The Tenant cannot arbitrarily withhold rent. It is no excuse to claim mould is present in the rental unit.

I find that the Landlords have established that the Tenant has failed to pay rent in accordance with the tenancy agreement. I further find that the Tenant withheld rent owed to the Landlords without authorization to do so under the *Act*.

I find the Landlords have demonstrated the 10-Day Notice was issued in compliance with the *Act*. I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

Given that the 10-Day Notice was properly issued, I grant the Landlords an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlords within two days of receiving the order of possession.

### Unpaid Rent Claim

The Landlords seek unpaid rent in their application. I note the claim is limited for December 2022 and January 2023. However, I permit the Landlords to seek unpaid rent for the months following their application as permitted by Rule 4.2 of the Rules of Procedure given that it could be reasonably anticipated the unpaid rent claim would grow due to the passage of time.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.

3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

In this instance, there is no dispute. The Tenant failed to pay rent in accordance with the tenancy agreement and has failed to do so from December 2022 onwards. I find that the Tenant acted in breach of his obligation to pay rent under the tenancy agreement and in breach of his obligation s. 26(1) of the *Act*. I further find that the Landlords have suffered loss of rental income from December 2022 to present that could not have been mitigated as the Tenant continues to occupy the rental unit.

I have considered the discrepancy between the assertion that rent is due on the 2<sup>nd</sup> of each month, rather than the 1<sup>st</sup> as listed in the tenancy agreement. However, I find that this is irrelevant under the circumstances as there is no dispute that the Tenant's obligation to pay rent has been triggered given that the hearing took place on May 2, 2023. Accordingly, I find that the Landlord is entitled to a monetary order totalling \$23,970.00 (\$3,995.00 x 6 months (Dec 2022 to May 2023)).

### Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

As the tenancy is over, the Tenant's claim under s. 62 of the *Act*, which was severed from the application at the outset, is dismissed without leave to reapply. The Tenant's claim under s. 67 of the *Act* is dismissed with leave to reapply.

As the Tenant was unsuccessful, I find he is not entitled to his filing fee. I dismiss the Tenant's claim under s. 72(1) of the *Act* without leave to reapply.

I grant the Landlords a monetary order for unpaid rent under s. 67 of the *Act*. I order the Tenant pay \$23,970.00 to the Landlord in unpaid rent from December 2022 to May 2023.

As the Landlords were successful, I grant them their filing fee. I order under s. 72(1) of the *Act* that the Tenant pay the Landlords' \$100.00 filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order the Tenant pay the combine amount of **\$24,070.00** (\$23,970.00 + \$100.00) to the Landlords.

It is the Landlords' obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlords with the Supreme Court of British Columbia 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 02, 2023

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Residential Tenancy Branch