



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, CNC, MNDCT, PSF, LAT, OLC

For the landlord: OPR, OPC, OPN, MNRL-S, MNDL-S, MNDCL-S, FF

### **Introduction**

This hearing was convened as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

In their original application and amended applications, the tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice), an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice), compensation for a monetary loss or other money owed, an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, authorization to change the locks to the rental unit, and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The landlords applied for an order of possession of the rental unit based on a 10 Day Notice, an order of possession based on a 1 Month Notice, an order of possession of the rental unit based upon the tenant's written notice, a monetary order for unpaid rent, compensation for alleged damage to the rental unit by the tenant, compensation for a monetary loss or other money owed, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The tenant, the tenant's witness, and the landlords attended the hearing. All parties were affirmed. The tenant's witness was then excused from the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

The landlord confirmed receiving the tenant's application by email and the tenant confirmed receiving a large amount of evidence from the landlord.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

Rule 2.3 states that 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.

In this application, both parties listed multiple claims. I find the most urgent matters to consider are the tenant's request for cancellation of the Notices and the landlords' request for an order of possession based upon the Notices and monetary claim for unpaid rent. I further find that the additional claims on the application are not sufficiently related to the primary issue. I will, therefore, only consider the most urgent matters as referenced above. The balance of the unrelated matters will be addressed within this Decision.

I informed the parties of this decision at the hearing.

As an additional procedural matter, at the beginning of the hearing, the tenant requested an adjournment in order to gather more evidence and to deal with personal matters. I declined to grant an adjournment for several reasons. The tenant filed their application on January 18, 2023, and made 3 additional amendments at various times after the initial application. I find the tenant had sufficient time to gather the relevant evidence for the hearing which has been scheduled since January 24, 2023.

Apart from that, the landlords' evidence claimed that they had not received any rent from the tenants since the 10 Day Notice was issued on February 6, 2023. I find it would be procedurally unfair to the landlords to grant the tenant's request for an adjournment due to the serious allegations by the landlord that they have not received rent in 4 months.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notices?

Are the landlords entitled to an order of possession of the rental unit based upon the Notices, a monetary order for unpaid rent, and recovery of the cost of the filing fee?

#### Background and Evidence

The written tenancy agreement filed in evidence showed a tenancy start date of April 7, 2022, monthly rent of \$1,200, due on the 1<sup>st</sup> day of the month, and a security deposit of \$600 being paid by the tenant to the landlords.

The parties were informed the landlord would proceed first in the hearing to explain or support their Notice, as required by the Rules.

The landlord submitted that on February 6, 2023, the tenant was served the Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,200 owed as of February 1, 2023. The effective vacancy date listed on the Notice was February 15, 2023. The tenant confirmed in their application receiving the Notice on February 8, 2023. Filed into evidence by both parties was a copy of the Notice.

The landlord submitted that since the tenant was served the Notice, the tenant has not made any rent payments, and currently owes the amount of \$4800 in unpaid rent, or \$1200 for February, March, April and May 2023.

#### *Tenant's response-*

In response, the tenant agreed the rent was not paid since February 2023, but asserted that the landlords turned off the power and internet to their rental unit and they were not able to work from home as a result. This resulted in a loss of employment income. The landlords also illegally raised the rent, according to the tenant.

## Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

### *Landlord's application-*

#### **Order of possession of the rental unit –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the RTB to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice. In this case, the date the tenant confirmed receiving the Notice was February 8, 2023, and the listed effective date of February 15, 2023 is corrected to February 18, 2023.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, they confirmed the landlords' evidence that they had not paid the monthly rent listed on the Notice or any rent since that time. Although the tenant indicated they had reason not to pay the rent, their remedy would have been to pay the monthly rent due under the tenancy agreement and wait for the hearing on their applications, where the issues in their original application would be considered. Once the tenant did not pay the monthly

rent, resulting in the landlords serving a 10 Day Notice, consideration of that Notice became the primary issue.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to, and I grant an **order of possession** for the rental unit **effective 2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is **cautioned** that costs of such enforcement, such as **bailiff fees**, are recoverable from the tenant.

It was not necessary to consider the landlord's request for an order of possession based upon the 1 Month Notice or the tenant's alleged written notice to vacate as I upheld the 10 Day Notice.

#### **Monetary order –**

I also find that the landlord submitted sufficient and undisputed evidence to show that the tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement for February 2023, as indicated on the Notice, and no rent for March, April, and May, for a total of \$4800 outstanding unpaid rent.

I therefore find the landlords are entitled to a monetary award of **\$4900**, comprised of a total amount of unpaid rent of **\$4800** through May 2023, and the **\$100** filing fee paid by the landlords for this application.

At their request, I authorize the landlord to retain the tenant's security deposit of **\$600** in partial satisfaction of their monetary award.

I grant the landlord a monetary order for the balance due, in the amount of **\$4300**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

*Tenant's application-*

As I have granted the landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's Notice, I **dismiss** the tenant's application for cancellation of the 10 Day Notice, **without leave to reapply**.

Both applications –

I **dismiss without leave to reapply** the claims made in the tenant's applications for an order requiring the landlord to provide for services or facilities, authorization to change the locks to the rental unit, and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, as these are matters relating to an ongoing tenancy.

I **dismiss with leave to reapply** the tenant's monetary claim.

I **dismiss with leave to reapply** the landlords' monetary claims not related to the matter of unpaid rent.

Conclusion

The landlords' application was granted.

The tenant's application requesting cancellation of the 1 Month Notice and 10 Day Notice was dismissed without leave to reapply.

Other issues in both applications were dealt with as recorded above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 12, 2023

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Residential Tenancy Branch