



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNDCT, RR, RP, AAT, PSF, OLC, FFT

### 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 February 23, 2023 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs;
- an order pursuant to s. 70 to allow access to the rental unit;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law;
- 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.

M.A. appeared as the Tenant. K.N. and C.A. appeared as the Landlord’s agents.

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 Tenant advised having served the Landlord with his application and evidence, which the Landlord’s agents acknowledge receiving without objection. Pursuant to s. 71(2) of the *Act*, I find that the Landlord was sufficiently served with the Tenant’s application and evidence.

### Preliminary Issue – Service of the Landlord's Evidence

The Landlord's agents advise that the Landlord's evidence was posted to the Tenant's door on April 20, 2023. The Tenant initially denied being served with the Landlord's evidence, though acknowledges receiving an envelope some seven days or so prior to the hearing. The Tenant later says that it was received four or five days prior to the hearing. The Tenant also drew distinction between evidence and digital evidence, saying he denies receiving digital evidence. Upon clarification from the Landlord's agent K.N., I am told by him that he saw the Tenant collect the package on April 20, 2023 and threw it outside the door.

Rule 3.15 of the Rules of Procedure requires respondents, in this case the Landlord, to serve their evidence on the applicants and it must be received by the applicants at least seven days prior to the hearing.

I found the Tenant's evidence on this point both vague and inconsistent. There was no question of digital evidence, only physical documents. I am told the Tenant received an envelope, though says that this was seven, or four, or five days prior to the hearing. I am told by the Landlord's agents that the evidence was posted to the door on April 20, 2023. I accept that the Landlord did so. I am told by the Landlord's agent K.N. that he witnessed the package being retrieved and thrown to the ground. I also accept that this was done.

I find that the Landlord served its response evidence in accordance with s. 88 of the *Act* and was received by the Tenant on April 20, 2023.

### Preliminary Issue – Tenant's Claims

The Tenant seeks wide ranging 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.

In this instance, I find that the primary issue in dispute is the 10-Day Notice and that all other aspects are not sufficiently related to this claim. Indeed, some of the claims are

only relevant should the tenancy continue such that they are secondary to whether the 10-Day Notice is enforceable.

Accordingly, I dismiss the Tenant's claims under ss. 67 (compensation) and 65 (past rent reduction) of the *Act* with leave to reapply regardless of the outcome of the hearing. With respect to the remaining claims dismissed, being those filed under ss. 32 (repairs), 27 and 62 (provide services or facilities), 70 (allow access to the rental unit), and 65 (future rent reduction) of the *Act*, they shall be dismissed with or without leave to reapply depending on whether the tenancy continues or not.

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

#### Preliminary Issue – Request to Join Applications

At the hearing, the Landlord's agent advised of upcoming hearings before the Residential Tenancy Branch filed by the Tenant which essentially replicated this matter. Review of the Landlord's written submissions indicates various file numbers. The agents sought to have the matters joined and provided copies of the relevant file numbers.

I declined to grant the joinder request on the basis that if the other applications replicated this matter, then I would invariably sever the various claims such that only the enforceability of the 10-Day Notice would be dealt with, given my findings above. The subsequent applications will be dealt with in their own time.

#### Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession an order for unpaid rent?
- 3) Is the Tenant entitled to his 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 on September 1, 2022.
- Rent of \$2,815.00, which includes a \$95.00 parking fee, is due on the first day of each month.
- The Tenant paid a security deposit of \$1,360.00 to the Landlord.

I am provided with a copy of the tenancy agreement.

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 K.N. advises that the 10-Day Notice was posted to the Tenant's door on February 23, 2023. K.N. advises that when he served the 10-Day Notice, he witnessed the Tenant remove the 10-Day Notice from his door and throw it to the ground. The Landlord's evidence includes a proof of service form showing that K.N. posted the 10-Day Notice to the Tenant's door on February 23, 2023. The Tenant denies receiving the 10-Day Notice other than by email.

On balance, I prefer the Landlord's evidence with respect to service of the 10-Day Notice, which is supported by a witnessed proof of service form. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and that the Tenant received it on February 23, 2023, which is when he retrieved it from his door and threw it to the ground.

The Landlord's agents advise that the Tenant failed to pay rent and the parking fee for December 2022 and February 2023, which prompted the service of the 10-Day Notice. In addition, I am told by the Landlord's agents that the Tenant paid rent and the parking fee for January 2023 and March 2023, but that rent and the parking fee for April 2023 remains unpaid.

The Tenant testified to issues in paying rent, in particular the use of an online portal which he says does not adequately protect his privacy. The Tenant says that he went to the Landlord's office to pay rent in December 2022 and February 2023 but that it was not taken. The Tenant does, however, say that he was successful in paying rent by

bank draft in January 2023 and March 2023. The Tenant also made mention of issues with heat and loss of facilities, that he had lost quiet enjoyment of the rental unit, and that the Landlord lost his cheque in November 2022.

The Landlord's agents advise that there are multiple methods by which the Tenant can pay rent and that he did do so for January 2023 and March 2023.

Addressing the Tenant's arguments individually, the Tenant argues that the Landlord lost a rent cheque for November 2022. Frankly, this is irrelevant since the Landlord tells me that rent for November 2022 was paid. There is no argument by the Tenant that he gave rent cheques to the Landlord for December 2022 and February 2023, which were then lost by the Landlord.

The Tenant argues the online portal preferred by the Landlord was problematic and that there were administrative issues that prevented him from using it. This argument is unpersuasive since the Tenant did, in fact, pay rent in January 2023 and March 2023, thereby confirming that rent could have been paid by other means. Further, the fact that he did pay rent for those two months refutes any argument that the Landlord refused to accept rent at their office.

The Tenant also made mention of various issues pertaining to loss of facilities, service, and quiet enjoyment. However, s. 26(1) of the *Act* requires a tenant to pay rent when it is due regardless of whether the landlord complies with the *Act*, tenancy agreement, or the Regulations. In other words, even if the Tenant lost use of facilities or services or his right to quiet enjoyment was somehow disturbed, he was still expected to pay rent. In this instance, there is little dispute that he did not do so for either December 2022 or February 2023.

I find that the Landlord has established that the Tenant failed to pay rent in accordance with the tenancy agreement. The 10-Day Notice was properly issued by the Landlord. I hereby dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I hereby grant the Landlord an order of possession effective two days after the Tenant receives it.

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. There is little dispute that the Tenant has not paid rent for December 2022, February 2023, and April 2023. I do not, however, include the parking fee in this amount. The wording of s. 55(1.1) of the *Act* is clear that orders must only be for unpaid rent and the tenancy agreement is clear that rent is \$2,720.00. Accordingly, I grant the Landlord an order for unpaid rent totalling \$8,160.00 (\$2,720.00 x 3 months).

### Conclusion

The Tenant's application cancelling the 10-Day Notice is dismissed without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) 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.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. The Tenant shall pay **\$8,160.00** to the Landlord.

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

Of those claims severed from the Tenant's application under Rule 2.3 of the Rules of Procedure, only the claims under ss. 67 (monetary compensation) and 65 (past rent reduction) of the *Act* are dismissed with leave to reapply. The balance of the claims, being those under ss. 32 (repairs), 27 and 62 (provide services or facilities), 70 (allow access to the rental unit), and 65 (future rent reduction) of the *Act*, are dismissed without leave to reapply given the tenancy is over.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord 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 Landlord 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 08, 2023

---

Residential Tenancy Branch