



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNR, DRI, FFT

Landlord: OPR, OPN, MNRL, MNDCL, FFL

Introduction

This hearing dealt with the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a 10 day notice to end tenancy for unpaid rent or utilities pursuant to section 46 of the Act;
- cancellation of a rent increase above the amount allowable under the Act pursuant to section 41 of the Act; and
- authorization to recover the filing fee for the Tenant's application from the Landlord pursuant to section 72 of the Act.

The Landlord applied for:

- an Order of Possession under 10 day notice to end tenancy for unpaid rent or utilities pursuant to section 55 of the Act;
- an Order of Possession under a notice to end tenancy given by the Tenant pursuant to section 55 of the Act;
- compensation of \$26,849.00 for unpaid rent or utilities pursuant to sections 55 and 67 of the Act;
- compensation of \$5,100.00 for monetary loss or other money owed pursuant to section 67 of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72 of the Act.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the “**Rules of Procedure**”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Materials

The Tenant acknowledged receipt of the Landlord’s notice of dispute resolution proceeding package and documentary evidence (collectively, the “Landlord’s Dispute Resolution Documents”). I find the Tenant was served with the Landlord’s Dispute Resolution Documents in accordance with sections 88 and 89 of the Act.

The Landlord acknowledged receipt of the Tenant’s notice of dispute resolution proceeding package.

The Tenant was unable to confirm when and how he had served the Landlord with a copy of his evidence, which includes a spreadsheet and a video. The Landlord indicated that she did not receive the spreadsheet or video from the Tenant. The Tenant also submitted additional documentary evidence that is found in the Landlord’s evidence.

I find the Tenant did not serve the Landlord with his spreadsheet and video as required under the Rules of Procedure. Pursuant to Rule 3.14, an applicant must ensure that their evidence is received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. The Tenant indicated that the spreadsheet contains his accounting of rent paid to the Landlord, and that the video is short and relevant to the issue of the illegal rent increase. I find accepting the Tenant’s late evidence would not unreasonably prejudice the Landlord or result in a breach of the principles of natural justice, and that this evidence may be admitted pursuant to Rule 3.17 of the Rules of Procedure. I directed the Tenant to email a copy of the spreadsheet and video to the Landlord during the hearing. The Landlord was given opportunity to review the Tenant’s evidence and to submit a response by June 5, 2023. The Landlord submitted a statement on June 4, 2023 confirming receipt of the Tenant’s evidence.

Based on the foregoing, I find the Landlord to be served with the Tenant’s notice of dispute resolution proceeding package in accordance with section 89 of the Act. I further find the Landlord to be sufficiently served with the Tenant’s evidence pursuant to section 71(2)(c) of the Act. Therefore, I have considered all of the evidence submitted by the Tenant in making this decision.

Preliminary Matter – 10 Day Notice to End Tenancy

The parties agreed that the Landlord issued two 10 day notices to end tenancy for unpaid rent or utilities, the first dated February 8, 2023 (the “**First Notice**”) and the second dated February 9, 2023 (the “**10 Day Notice**”).

The Landlord explained that she made a mistake on the First Notice so she re-issued the 10 Day Notice. The Tenant made his application to cancel the First Notice.

I find the First Notice was cancelled and replaced with the 10 Day Notice. I find it can reasonably be anticipated in the circumstances that the Tenant disputes the 10 Day Notice as well. Pursuant to Rule 4.2 of the Rules of Procedure, I have amended the Tenant’s application to dispute the 10 Day Notice.

Preliminary Matter – Landlord’s Claims

The Landlord’s application includes a claim for an Order of Possession based on a notice to end tenancy given by the Tenant. It appears that this claim was made in error, as the parties’ evidence does not indicate that the Tenant had given notice to end the tenancy. As such, I dismiss this claim without leave to re-apply.

In addition, the Landlord’s application includes a \$5,100.00 claim for monetary loss or other money owed, which is not the Landlord’s claim for unpaid rent. There was insufficient time to fully address this claim during this hearing, which lasted approximately 90 minutes. Furthermore, I find this claim to be unrelated to the Landlord’s claim for an Order of Possession and for unpaid rent under the 10 Day Notice. Pursuant to Rules 2.3 and 6.2 of the Rules of Procedure, I sever and dismiss this unrelated monetary claim with leave to re-apply.

Issues to be Decided

1. Should the rent increase be cancelled?
2. Should the 10 Day Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession?
4. Is the Landlord entitled to compensation for unpaid rent?
5. Are the parties entitled to reimbursement of their filing fees?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on September 1, 2015 and is month-to-month. The Tenant paid a security deposit of \$775.00.

Rent is due on the first day of each month. The parties disagree as to the amount of monthly rent payable.

According to the Landlord, monthly rent is \$3,000.00. The Landlord submitted that in September 2021, the Tenant offered to increase the monthly rent from \$2,200.00 to \$3,000.00 so that the Tenant could have access to another building at the back of the property (the “**Shop**”). The Landlord’s evidence is that this change was effective April 2022. The Landlord referred to correspondence from the Tenant in which the Tenant states that he will pay \$3,000.00 on the first of the month. The Landlord submitted a tenancy agreement signed by the parties in February 2021 which shows that rent was previously \$2,200.00 per month.

The Landlord explained that the Tenant fell behind with paying rent and was giving excuses for not paying the rent. According to the 10 Day Notice, the Tenant owed \$20,849.00 in unpaid rent as at February 1, 2023.

The Landlord provided a handwritten ledger and additional handwritten calculations which indicate that the Tenant had paid rent since November 2021 as follows:

Date	Amount Paid	Payment Method
November 15, 2021	\$1,000.00	Cash
November 19, 2021	\$1,000.00	Cash
December 14, 2021	\$1,000.00	Cash
December 22, 2021	\$1,000.00	Cash
January 2022	\$2,784.00	Repair Bills (Credit)
February 4, 2022	\$2,200.00	Cash
March 30, 2022	\$2,500.00	Cash
May 2022	\$2,750.00	Fans Controller (Credit)

September 2, 2022	\$3,000.00	e-Transfer
September 17, 2022	\$1,000.00	e-Transfer
September 25, 2022	\$2,000.00	e-Transfer
September 27, 2022	\$2,000.00	e-Transfer
December 13, 2022	\$2,000.00	e-Transfer
December 22, 2022	\$1,000.00	e-Transfer
December 31, 2022	\$2,000.00	e-Transfer
January 3, 2023	\$1,000.00	e-Transfer
February 2, 2023	\$2,200.00	e-Transfer
February 3, 2023	\$500.00	e-Transfer

The Landlord's ledger indicates that the total amount of rent paid by the Tenant from November 2021 to January 2023 was \$28,234.00. It further states that the total amount of rent payable during this period was \$48,776.00, which consists of \$9,976.00 in unpaid rent owing as at November 2021, plus \$2,200.00 per month from December 2021 to March 2022, and \$3,000.00 per month from April 2022 to January 2023. The Landlord's ledger indicates that the difference between the total rent payable (\$48,776.00) and the total rent paid up to and including January 2023 (\$28,234.00) is \$20,542.00. The Landlord's handwritten calculations further show that by February 3, 2023, the Tenant owed unpaid rent of \$20,849.00, which is the amount reflected on the 10 Day Notice. I note this last figure appears to contain a minor transcription error, as the correct amount should be \$20,842.00 based on the Landlord's calculations.

The Landlord confirmed that the Tenant has since stopped paying the rent and has not paid any rent for five months.

The Tenant acknowledged receipt of the 10 Day Notice and indicated that a copy was given to his spouse and mother, who reside with the Tenant.

The Tenant submitted that he was not served with a proper notice to increase the rent by \$800.00. The Tenant stated that the rent was already increased by \$600.00 in February 2021 to include use of the Shop. The Tenant expressed that his family had used the Shop since 2018 for parties and to store hockey equipment and as a workshop.

According to the Tenant, he serviced barns on the property, and repaired and upgraded the rental unit which cost approximately \$4,000.00 per year. The Tenant indicated that he had replaced walls, removed mould, and replaced the kitchen and bathroom. The

Tenant stated that the Landlord is missing some fan bills. The Tenant stated that he gave the Landlord invoices of what he had purchased, and would turn in bills over time, though some were not turned in.

The Tenant indicated that the \$3,000.00 per month was agreed to under pressure and there were conversations about market rent for the property, which is currently under-market. The Tenant indicated that the Landlord told him someone would be willing to rent the property for \$5,000.00 per month. The Tenant stated he was surprised this and surprised to be told how much money he owed the Landlord.

The Tenant stated that he never kept a good accounting of the rent paid, and always paid via cash and e-transfer. The Tenant indicated that he agreed to pay rent on time, on the first day of the month, and pay an extra \$800.00 per month until he caught up on any disputed amount. The Tenant stated that he went by the Landlord's numbers at that time. The Tenant indicated that after going back to his own spreadsheet, he realized he had overpaid the rent until this month, June 2023, by \$793.20. The Tenant stated that the Landlord missed some cash payments. The Tenant stated that he believes there is more, but he had no way to prove it, since he never kept a rent receipt for 8 years. The Tenant argued that the Landlord owes him money and that the rent increase is incorrect. The Tenant stated he based his records on the Landlord's records, and then went back for his e-transfers and "extrapolated" on the cash payments plus the bills. During the hearing, the Tenant variously described the Landlord's accounting as "a little off" and also "totally incorrect". The Tenant indicated that he has had a good "run", is happy to move, and wants to be left alone until he moves.

The Tenant's spreadsheet contains similar entries as those provided by the Landlord since November 2021, with the addition of the following entries (the "**Additional Payments**") not in the Landlord's records (total \$7,700.00):

Date	Amount Paid	Payment Method
November 12, 2021	\$1,000.00	Cash
December 22, 2021	\$1,000.00	e-Transfer
February 2, 2022	\$2,200.00	e-Transfer
March 30, 2022	\$2,500.00	e-Transfer
May 6, 2022	\$1,500.00	e-Transfer

The Tenant's spreadsheet also deducts the following amounts (the "**Deductions**"), totalling \$16,077.20, from rent payable to the Landlord for "work" and other items which are not credited in the Landlord's ledger:

Date	Amount	Item
May	\$1,400.00	Hot Water Tank
December 2022	\$5,736.00	Barn Service
March 2023	\$4,191.20	House Repairs
Undated	\$1,250.00	Fans Barns
Undated	\$500.00	Truck
Undated	\$3,000.00	e-Transfer to J

The Tenant explained that he took \$500.00 off rent for a truck that the Landlord removed from the property. The Tenant stated that there was a recent hot water tank replacement. The Tenant argued that he was never mandated to give the bills to the Landlord and had an arrangement where he would repair the house as needed.

According to the Tenant's spreadsheet, the total amount of rent payable (\$5,718.00 owed as at May 2021, plus \$2,200.00 per month from June 2021 to May 2023) is \$62,918.00, while the total amount paid (including cash, e-transfer, credits for work, and e-transfer to an individual J) equals \$63,711.20, resulting in an overpayment of \$793.20.

Analysis

1. Should the rent increase be cancelled?

Under section 41 of the Act, a landlord must not increase rent except in accordance with Part 3 of the Act. Section 43 of the Act allows a landlord to impose a rent increase only up to the amount:

- calculated in accordance with the regulations
- agreed to by the tenant in writing
- ordered by the director on an application in the circumstances prescribed in the regulations

In 2022, the maximum permitted annual rent increase under the regulations was set at 1.5%.

The Tenant submits that the Landlord raised the rent in April 2022 from \$2,200.00 to \$3,000.00 per month without written notice to the Tenant, and that the Tenant discovered this in January 2023 when presented with the Landlord's statement of account.

The Landlord submits that the parties had a verbal agreement to increase the rent by \$800.00 in April 2022 for the Tenant to use the Shop. However, I find there is insufficient evidence of such an agreement. I find the communication records submitted by the Landlord to include a message from the Tenant dated January 24, 2023, which states in part as follows:

As I said we will keep up our monthly payment on time and work on any back amounts due – I have paid 14500 since September 1 and will have another 3000 on the first of every month until we catch up any disputed amount.

(emphasis underlined)

I find this message and the other messages submitted by the Landlord which refer to payment of \$3,000.00 a month appear to be statements made by the Tenant in the context of catching up with rental arrears in January 2023. I find the Landlord did not submit any correspondence records to show that the Tenant had acknowledged rent was \$3,000.00 per month prior to January 2023. I find there is insufficient evidence to explain why the effective date of the rent increase would have been April 2022 or that the increase was specifically for the Tenant to use the Shop.

I note while I do not find the parties' 2021 tenancy agreement to refer to the Shop or any facility other than the house and the driveway for parking, section 24 the agreement states that it may only be amended or modified by a written agreement executed by the parties.

I further note I have reviewed the video submitted by the Tenant but do not find it to be helpful evidence for the following reasons:

- This video shows only the outside of the Shop.
- This video does not have a date or timestamp. The video file name is labeled "2019", but the meta data for the file states that this media was "created" on 2021-08-20 at 1:46 PM.

Nevertheless, I find overall there is insufficient evidence that the parties had agreed to increase the rent by \$800.00 for the Tenant to use the Shop. I find there is nothing to indicate that the parties had agreed to this change in writing or that the Landlord had issued a three-month notice regarding this increase as required under sections 42(2) and 43(1)(c) of the Act and the parties' agreement.

Therefore, I conclude that the Landlord was not entitled to increase the rent from \$2,200.00 to \$3,000.00 in April 2022. The Tenant's claim to dispute this \$800.00 rent increase is granted.

2. Should the 10 Day Notice be cancelled?

Section 26(1) of the Act states that 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 tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

Based on the Landlord's ledger and calculations provided to the Tenant in January 2023, I find the Tenant knew, or ought to have known, that aside from the additional \$800.00 per month charged by the Landlord from April 2022 to February 2023, the Tenant still owed unpaid rent according to the Landlord's records. I find the Tenant knew, or ought to have known, that a transcription error resulted in the unpaid rent amount being recorded as \$20,849.00 rather than \$20,842.00. I find this transcription error occurred at page 3 of the Landlord's calculations regarding the \$2,000.00 e-transfer received on December 13, 2022.

I find that pursuant to section 68(1) of the Act, it is reasonable in the circumstances to amend the amount of unpaid rent stated on the 10 Day Notice to \$20,842.00 to correct the transcription error, and to reduce the amount owing by \$8,800.00 ($\800.00×11 months from April 2022 to February 2023), so that the outstanding amount as at February 2023 was \$12,042.00.

I find the 10 Day Notice to otherwise comply with the requirements of section 52 of the Act in form and content.

I find the Tenant was served with the 10 Day Notice on February 9, 2023 in accordance with section 88(e) of the Act.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment of rent or utilities, or pay the outstanding amount in full, within 5 days of receiving such a notice. Records of the Residential Tenancy Branch indicate the Tenant's application was submitted on February 9, 2023. As mentioned above, I have allowed the Tenant's application to be amended to dispute the 10 Day Notice. I find the Tenant's application was made within the time limit stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Landlord's evidence is that the Tenant owed unpaid rent of \$12,042.00 as at February 2023, excluding the additional \$800.00 per month from April 2022 to February 2023 which I have determined was not properly agreed to by the parties.

I find that by the Tenant's own account, rent has been paid sporadically in different amounts since 2021 with a final e-transfer of \$500.00 paid on February 3, 2023.

I find that in terms of amounts paid or credited for rent, the Tenant's spreadsheet generally agrees with the amounts indicated in the Landlord's ledger but adds the Deductions totalling \$16,077.20 and the Additional Payments totalling \$7,700.00.

I find the Deductions are in addition to the two amounts that the Landlord agreed in her ledger to credit the Tenant for repairs.

The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

I find there is insufficient evidence that the Landlord had consented to the Deductions or that the Deductions were for any of the above reasons allowed under the Act. I note for a tenant to be allowed to deduct payment for emergency repairs from the rent under section 33 of the Act, the repairs must meet the criteria for "emergency repairs" specified under this section, and the tenant must, among other requirements, give the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. I find the Tenant has not provided particulars (e.g. details explaining the nature of services or repairs provided, specific dates, breakdowns of amounts claimed etc.) or any documentary evidence (e.g. invoice or receipt) in support of the Deductions. I further note I do not find any of the Deductions to refer to the \$800.00 rent increase, which I have already excluded from the calculations in any event.

Regarding the Additional Payments, I find the Tenant acknowledged that he did not keep any cash receipts from the Landlord. I find the Additional Payments are also not supported by any external evidence such as e-transfer confirmation screenshots or bank statements. Under these circumstances, I accept on a balance of probabilities the Landlord's evidence that she did not receive the Additional Payments from the Tenant.

Since I have not accepted the Deductions or the Additional Payments, I find on a balance of probabilities that the Tenant owed unpaid rent of \$12,042.00 to the Landlord as at February 2023, in accordance with the Landlord's ledger adjusted to remove the \$800.00 rent increase.

Based on the foregoing, I conclude that the Tenant did not pay rent to the Landlord as required under the parties' tenancy agreement and that the Landlord has established the grounds for ending this tenancy under the 10 Day Notice.

Accordingly, the Tenant's claim to cancel the 10 Day Notice is dismissed without leave to re-apply.

3. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the 10 Day Notice, as amended pursuant to section 68(1) of the Act, to comply with requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the 10 Day Notice, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

4. Is the Landlord entitled to compensation for unpaid rent?

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed.

According to Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent, if the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

I find it is not disputed that the Tenant continues to occupy the rental unit. Pursuant to section 68(2)(a) of the Act, I order that this tenancy is ended the date of this hearing, or **June 2, 2023**.

I am satisfied that as of the date of the hearing, the Tenant owes unpaid rent to the Landlord (total \$20,842.00) calculated as follows:

- **\$12,042.00** as at February 2023 when the 10 Day Notice was issued (calculated as \$20,842.00 less \$8,800.00, or \$800.00 × 11 months from April 2022 to February 2023); plus
- **\$8,800.00** for unpaid rent from March 2023 to June 2023 (calculated as \$2,200.00 × 4 months). I note that I do not pro-rate rent for the month of June 2023 as I find rent is paid on a monthly, not daily, basis, and was due in full on the first day of this month.

Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlord the sum of **\$20,842.00** for unpaid rent.

5. Are the parties entitled to reimbursement of their filing fees?

The filing fee is a discretionary award that is generally granted to an applicant who has been successful in their application.

The Tenant was partially successful in his application. I allow the Tenant's claim for reimbursement of the filing fee under section 72(1) of the Act.

The Landlord has been successful in establishing that the 10 Day Notice should be upheld and that unpaid rent is owing. As the Landlord's own application sought relief similar to those that have been granted to the Landlord on the basis of the Tenant's application to cancel the 10 Day Notice, I also allow the Landlord's claim for reimbursement of her filing fee under section 72(1) of the Act.

Since both parties were granted reimbursement of their filing fees, I set off the two amounts against each other.

I have found that the Landlord is entitled to unpaid rent of \$20,842.00. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's \$775.00 security deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent up to February 2023	\$12,042.00
Unpaid Rent from March to June 2023 (\$2,200.00 × 4 months)	\$8,800.00
Subtotal	\$20,842.00
Less Security Deposit	- \$775.00
Total Monetary Order for Landlord	\$20,067.00

Conclusion

The Landlord is successful in proving the grounds for ending the tenancy under the 10 Day Notice and establishing that the Tenant owes unpaid rent. The Landlord's claim to recover her filing fee is granted.

The Tenant's claim to dispute a rent increase is granted, resulting in a reduction of the total amount of rent owing to the Landlord. The Tenant's claim to recover the filing is granted and is set off against the filing fee awarded to the Landlord. The Tenant's claim to cancel the 10 Day Notice is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord is authorized to retain the Tenant's **\$775.00** security deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$20,067.00** for the balance. This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

The Landlord's \$5,100.00 claim for monetary loss or other money owed is severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply

does not extend any applicable time limits. The Landlord's claim regarding a notice to end tenancy given by the Tenant is dismissed without leave to re-apply.

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: June 07, 2023

Residential Tenancy Branch