



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNDCT, DRI, RR, RP, OLC, FFT

### Introduction

The Tenant applied for dispute resolution (Application) and seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act);
- Compensation for monetary loss or other money owed under section 67 of the Act;
- to dispute a rent increase under section 43 of the Act;
- to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- an order for repairs to be made to the rental unit under section 32 of the Act;
- for the Landlord to comply with the Act, *Residential Tenancy Regulation* or the tenancy agreement under section 62 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

The Landlord's Agent and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

### Preliminary Issue: Amendment

The Tenant confirmed their minor son, aged 6, had been listed as an Applicant. The Tenant agreed for their son to be removed from the Application. As such, I amend the application accordingly per rule 4.2 of the *Rules of Procedure*.

### Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

### Issues to be Decided

- 1) Should the Notice be canceled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on April 1, 2021.
- Rent is \$1,325.00 per month due on the first day of the month, per the tenancy agreement.
- A security deposit of \$662.50 was paid by the Tenant which the Landlord still holds.

- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit.

The Landlord's Agent testified as follows. The Landlord uses an accounting system where two figures are recorded in respect of rent. The first figure is the market rent and the second is the actual amount of rent per the tenancy agreement. In the case of the Tenant, the market rent had been recorded as \$1,250.00 per month and the rent per the tenancy agreement was recorded as \$1,325.00 per month.

Due to an error on the Landlord's part, the Tenant was incorrectly charged the market rent of \$1,250.00 per month instead of the amount per the tenancy agreement of \$1,325.00. This had been happening since the start of the tenancy. Payments were made by pre-authorized debits. Rent increases had been issued to the Tenant using the incorrect amounts too, which meant the rent increase forms stated amounts that were lower than \$1,325.00 per month.

The Landlord's Agent noticed the error in early 2023. The errors in payments on the Landlord's part meant the Tenant had underpaid rent by \$1,488.00 as of January 1, 2023.

The Landlord's Agent later noticed the Tenant had also been charged for two parking spaces instead of one. The parking fee is \$35.00 per month per parking space. Rent and the parking fees are taken by the Landlord in one payment. This meant the Tenant was charged \$70.00 on top of rent instead of \$35.00. This error had occurred for 22 months. As a result, the Tenant had overpaid parking fees by \$770.00 as of January 1, 2023.

The parking agreement is separate to the tenancy agreement and was entered into evidence. The Landlord's Agent also noticed that the Tenant had not been charged a \$75.00 deposit for a fob to access the parkade at the start of the tenancy.

The Tenant was notified of the discrepancy in rent payments by email on January 27, 2023 and of the overpayment for parking fees on February 13, 2023, also via email. The Landlord and the Tenant then communicated over the next few weeks regarding the arrears. Copies of the email exchange between the parties were entered into evidence.

Throughout the email exchange, the Tenant did not agree with the notion that there were rental arrears and did not agree to amend the pre-authorized debit amount from the current amount of \$1,338.00 per month to \$1,360.00 per month.

I was referred to the accounting ledger submitted into evidence by the Landlord and the payment history was summarized by the Landlord's Agent as follows:

- From the start of the tenancy on April 1, 2021 the Tenant was charged \$1,320.00. This was made up of \$1,250.00 for rent and two lots of \$35.00 parking fees ( $\$1,250.00 + 35.00 + 35.00$ ).
- Effective May 1, 2022, the Tenant was charged \$1,338.00. This was based on \$1,268.00 for rent, following a 1.5% increase on \$1,250.00, plus and two lots of \$35.00 parking fees ( $\$1,268.00 + \$35.00 + \$35.00$ ).
- On January 31, 2023 the rental arrears of \$1,488.00 and overpayment of parking fees of \$770.00 were applied to the Tenant's account by the Landlord. With the \$75.00 owed for the parking fob this left a balance owing of \$793.00 ( $\$1,488.00 + \$75.00 - \$770.00$ ).
- The Landlord attempted to collect \$2,663.00 from the Tenant on February 1, 2023 which was not successful due to insufficient funds. The Landlord's Agent was unsure why this amount was requested.
- \$1,325.00 in respect of rent and \$35.00 in respect of parking fees were applied to the Tenant's account for a total of \$1,360.00 resulting in a balance owing of \$2,153.00 as of February 3, 2023 ( $\$1,360.00 + \$793.00$ ).
- The Tenant paid \$1,338.00 by cheque on February 9, 2023, bringing the total balance owing to \$815.00 ( $\$2,153.00 - \$1,338.00$ ).
- The Tenant continued to pay \$1,338.00 by pre-authorized debit from March 1, 2023 onwards, which is \$22.00 short of the monthly total for rent and parking of \$1,360.00.
- As of April 1, 2023 the total arrears were \$859.00.

The Notice was issued to the Tenant on April 12, 2023 as the arrears were not paid. A copy of the Notice was entered into evidence by both parties. The Notice is signed April 12, 2023 and provides an effective date of April 25, 2023. The amount of outstanding rent listed is \$859.00, which the Landlord's Agent stated was a mistake. It should have read \$850.00. The Tenant has continued to pay \$1,338.00 per month, and arrears are \$903.00 as of June 1, 2023 as the payments made are \$22.00 short of the amount due per the tenancy agreement and parking agreement.

Another rent increase, effective May 1, 2023 was issued, though Landlord's Agent acknowledged that since the two rent increases issued throughout the tenancy contain inaccurate figures, that neither rent increases are in effect. Therefore, the amount due from the Tenant each month is \$1,325.00 for rent and \$35.00 for the parking fee and this is the amount due throughout the duration of the tenancy.

The Tenant testified as follows. Receiving the Notice has caused them a great amount of stress and they did not understand the figures given to them by the Landlord. They acknowledged that monthly rent was \$1,325.00, per the tenancy agreement they signed and were under the impression this was the amount they had been paying until the rent increase that took effect on May 1, 2022 when they started to pay \$1,338.00.

They did not think the figures put forward by the Landlord were correct in respect of payments they made. They thought they paid \$1,325.00 per month from the start of the tenancy. However, the Tenant was able to access their banking history during the hearing and verify previous rent payments made. They confirmed they were paying \$1,320.00 per month until May 1, 2022 when they started paying \$1,338.00 per month from then.

The Tenant stated they feel the parking agreement was altered by the Landlord as there was no specific stall number listed on their copy. However, they did acknowledge that the agreement did require payments of \$35.00 per month and that one parking stall was used throughout the tenancy.

### Analysis

#### *Unpaid rent*

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The Notice was issued by the Landlord on April 12, 2023 and provides for unpaid rent of \$859.00 as of April 1, 2023. Though the Landlord's Agent stated the amount of unpaid rent on the Notice was incorrect and should read \$850.00, I find that as of April 1, 2023, this was the correct amount of arrears, and this is the amount reflected on the accounting ledger submitted into evidence by the Landlord.

However, I find that the arrears referred to by the Landlord's Agent are made up of three separate charges, specifically rent, parking fees and the deposit for the access fob to the parkade.

Based on the testimony and evidence of both parties I find that the Tenant was obligated to pay \$1,325.00 per month in rent, per the tenancy agreement and, under the separate parking agreement, was obligated to pay \$35.00 per month and pay a refundable deposit of \$75.00 for the access fob. As confirmed by the Landlord's Agent, no rent increases took effect during the tenancy so rent of \$1,325.00 was due through the tenancy.

I find that owing to a mistake on the part of the Landlord, the payments taken from the Tenant have been incorrect throughout the majority of the tenancy. I accept the Tenant's testimony that they were of the understanding they were paying the correct amount and so were not aware of any issues with their rent payments. I am satisfied the error was first noticed in January 2023 by the Landlord's Agent.

When the error regarding payments was noticed, the Landlord unilaterally applied the funds received so far from the Tenant to cover the amount owed for the parking fob and the parking fee in their entirety. Therefore, without any input or agreement from the Tenant, arrears were applied to rent. I find this is highly prejudicial to the Tenant as a tenancy can be ended for unpaid rent by a landlord by issuing a notice to end tenancy under section 46 of the Act. Given that the error was entirely the fault of the Landlord I find this is also an unfair and unreasonable decision. The funds could have been allocated to cover rent and the arrears distributed to the parking fees and the access fob deposit. Furthermore, I find that the Tenant paid rent on time throughout the tenancy, with the exception of the rent due February 1, 2023, when the payment did not go through as the Landlord tried to take an excessively large amount of \$2,663.00 which could not be explained by the Landlord's Agent. The Tenant corrected the non-payment by providing the Landlord with a cheque promptly after the initial payment was unsuccessful.

No evidence before me indicated the amount paid by the Tenant each month was earmarked or broken up by them specifically for rent or parking, therefore I find the Landlord had the option to apply the funds entirely to rent and not to parking fees or the deposit for the fob, though they opted for most detrimental option for the Tenant and the most advantageous for themselves. There was no reason provided by the Landlord's Agent why they chose to apply the arrears to rent and not for parking fees.

Based on the testimony and evidence of both parties, I find that from April 1, 2021, to April 1, 2022 inclusive the Tenant made payments of \$1,320.00 per month to the Landlord. This means the Tenant underpaid rent by \$5.00 per month for 13 months for a total underpayment of \$65.00 for this period.

When the rent increase was issued to the Tenant, which, as discussed will not be enforced by the Landlord, the Tenant paid \$1,338.00 per month from May 1, 2022 to June 1, 2023 inclusive. This means the Tenant made payments over the amount of rent due by \$13.00 per month for 14 months which equates to an overpayment of rent of \$182.00 for this period.

This means that throughout the tenancy, the Landlord received \$117.00 more from the Tenant than the total rent due (\$182.00 - \$65.00). Therefore, the Landlord had the option to cover rent entirely and allocate arrears to parking fees and the access fob deposit.

Given this, I am not satisfied that on the balance of probabilities, the Notice was issued for a valid reason, namely, the non-payment of rent. Though I accept there are arrears owed by the Tenant, I find these should be considered arrears in respect of parking fees and the deposit for the access fob. A 10 Day Notice to End Tenancy can only be used by a landlord to end a tenancy for unpaid rent or utilities, not payments due through agreements separate to a tenancy agreement such as parking fees as is the case here.

Therefore, I grant the Tenant's Application and the 10 Day Notice to End Tenancy for Unpaid Rent dated April 12, 2023 is canceled and is of no force or effect. The tenancy continues.

#### *Parking fee and access fob deposit*

I find that the parking falls under the services and facilities outlined in section 1(d) of the Act and the deposit for the access fob to fall under services and facilities outlined in section 1(j) of the Act.

Based on the evidence and testimony of both parties I find that the Tenant was obligated to pay \$35.00 per month for the parking space from the start of the tenancy on April 1, 2021 to June 1, 2023 inclusive which is a period of 27 months. Therefore, the Tenant was obligated to pay the Landlord \$945.00 during this period (\$35.00 x 27). As

such, I find the Landlord is entitled to be compensated for the Tenant's breach of the parking agreement and use my authority under section 67 of the Act to issue the Landlord a payment order for this amount.

As discussed above, the Tenant has overpaid rent by \$117.00 so I find the payment order should be set off by this amount, and by a further amount of \$100.00 as because the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee.

Based on the accounting ledger submitted into evidence by the Landlord I find the Landlord knew, or ought to have known, the Tenant was not charged the refundable deposit for the access fob at the start of the tenancy as a balance of \$75.00 is seen at the end of each month. No evidence or testimony presented to me indicated the Tenant was made aware of this, or that the Landlord requested this amount at any time. The Landlord unilaterally applied the amount to the Tenant's account almost two years after the parking agreement was signed without the Tenant's approval or knowledge.

Given this, I find that the Landlord has implicitly waived their right to enforce this term of the parking agreement and at present, they are estopped from collecting the deposit for the access fob. The Landlord may explicitly notify the Tenant in writing that they wish to enforce this term in the parking agreement and collect the access fob deposit. However, as no evidence before me indicated this has been done, I decline to make a payment order in respect of the deposit for the access fob at this time.

#### *Amount of rent and parking fee*

I order that effective July 1, 2023 rent is \$1,325.00 per month and the parking fee is \$35.00 per month.

#### Conclusion

The Application is granted.

The Notice is canceled and the tenancy continues.

The Landlord is issued a Monetary Order in respect of unpaid parking fees. The Monetary Order is attached to this Decision and must be served on the Tenant. It is the

Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

The Order is summarized below.

Item	Amount
Unpaid parking fees	\$945.00
Less: overpayment of rent	(\$117.00)
Less: filing fee	(\$100.00)
<b>Total</b>	<b>\$728.00</b>

I order that effective July 1, 2023 rent is \$1,325.00 per month and the parking fee is \$35.00 per month.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 07, 2023

---

Residential Tenancy Branch