



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, RP, LRE, 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);
- An order for repairs to be made to the rental unit under section 32 of the Act;
- To suspend or set conditions on the Landlords' right to enter the rental unit under section 70 of the Act;
- For the Landlords to comply with the Act, *Residential Tenancy Regulation* (the 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 Tenant and the Landlords attended the hearing. The Landlords did not testify during the hearing, as they were represented by counsel, who was not affirmed as they confirmed they had been called to the British Columbia Bar and as such, have already sworn an oath. The Tenant 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: 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.

Preliminary Issue: Request for Amendment

At the hearing, the Tenant requested the following claims to be added to their Application:

- To make deductions from rent for expenditure on maintenance or repairs under section 65 of the Act;
- For the Landlords to issue receipts for rent paid in cash under section 26 of the Act;
- For the Landlords to be penalized for falsifying a tenancy agreement under section 87.3 of the Act;
- For the Landlords to uphold their obligations to repair and maintain the rental property under section 32 of the Act; and
- An Order of Possession for the Tenant under section 54 of the Act.

Rule 4.2 of the *Rules of Procedure* allows an application to be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the above amendments could not have been reasonably anticipated by the Respondent Landlords. Also, as the Tenant provided no evidence that an Amendment to an Application for Dispute Resolution form was served to the Respondents at least 14 days before the hearing, per rule 4.6 of the *Rules of Procedure*, I decline the Tenant's request to amend the Application. The Tenant is at liberty to make a separate Application for Dispute Resolution regarding the above issues.

### Issues to be Decided

- 1) Should the Notice be canceled?
- 2) If not, are the Landlords entitled to an Order of Possession?
- 3) Are the Landlords 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 entered different versions of written tenancy agreements into evidence. The Tenant provided a tenancy agreement dated February 15, 2021 which provided monthly rent of \$2,400.00 per month due on the first day of the month. The Tenant acknowledged they had come to an agreement with the Landlords to increase rent to \$2,600.00 per month in January 2023. The tenancy agreement is signed by the Tenant and Landlord JS.

The Landlords submitted a tenancy agreement dated January 14, 2022 which provided monthly rent of \$2,500.00 due on the fifteenth day of the month. The document has signatures for the Tenant and Landlord NS. The Tenant had a copy provided to them by the Landlords and the Tenant denied they signed it. The Tenant stated they had informed the RCMP about the document as they thought it was fraudulent and drew my attention to the contrasting signatures for the Tenant on the documents.

Aside from the disagreement regarding the written tenancy agreement, the parties did agree on the following regarding the tenancy:

- The tenancy began on March 1, 2021.
- Rent is \$2,600.00 per month due on the first day of the month.
- A security deposit of \$1,200.00 was paid by the Tenant which the Landlords still hold.
- The Tenant still occupies the rental unit.

The Landlords' counsel made the following submissions. The Notice was issued for non-payment of rent due April 1, 2023. Rent was also not paid for May and June 2023.

On April 1, 2023 Landlord NS suddenly passed away. NS had been the primary Landlord contact for the Tenant and had dealt with rent payments and the rental property in general. The Tenant pays rent in cash and visits the Landlords' home to make payments.

Before NS had passed away on April 1, 2023, NS had asked family members if the Tenant had come to their home to pay rent and was told that the Tenant had not paid rent yet. NS gave instructions to the family to give new numbers for the front of the rental property to the Tenant next time they came to pay rent and for the numbers to be given only if the Tenant paid rent. The numbers have not been collected yet. Counsel submitted this meant the Tenant had not been to the Landlords' home to pay rent. On April 2 or 3, 2023 Landlord MS assumed responsibility for the financial affairs of NS.

The Tenant informed MS of ongoing issues with the flooring in the rental property. MS and two family members attended the rental property on April 10, 2023 and spoke with the Tenant about the repairs to the flooring. When the Tenant, MS and their family members were standing outside the property, the Tenant said to MS he had not paid rent and would pay soon.

On April 13, 2023, MS sent a text message to the Tenant and then made a phone call to follow up with the Tenant asking them to pay rent. The Tenant replied and refused to pay rent. I was referred to copies of the text messages and video footage of the telephone conversation taking place that were submitted into evidence by the Landlords.

On April 18, 2023 MS attended the rental property again to discuss flooring repairs and rent with the Tenant. The Tenant said to MS he would discuss the matter with his wife. The Tenant's wife then yelled at MS and said they had already paid rent. The Notice was served to the Tenant in person on April 18, 2023. A copy of the Notice was entered into evidence. It is not signed or dated and provides an effective date of April 28, 2023. The Notice provides outstanding rent of \$2,600.00 as of April 1, 2023.

Since the Notice was issued, the Tenant has dropped off packages to the Landlords' home requesting payment for work the Tenant has done on the rental property. I was referred to two pieces of correspondence from the Tenant dated May 14, 2023 that were submitted into evidence by the Landlords. Counsel submitted the Tenant confirmed they did not pay rent in the correspondence.

I was referred to emails from the Tenant to Landlords' counsel dated May 24, 2023 where the Tenant stated they paid rent for April 2023 in cash and that their requests for receipts from the Landlords were refused.

Landlords' counsel submitted that the Tenant was taking advantage of an unfortunate event to not pay rent. As of June 1, 2023 the outstanding amount of rent owed by the Tenant is \$7,800.00.

The Tenant testified as follows. On March 26, 2023 NS came to the rental property to fix the hot water tank with the Tenant. They worked on the tank for two hours together and sat at the table afterwards with the Tenant's wife and son. The Tenant's wife gave NS \$2,600.00 in 26 \$100 bills as payment for rent due April 1, 2023. The Tenant did not get a receipt for payment of rent, as was normal. The Tenant stated they had been asking for years for receipts as they need them to complete their taxes.

The Tenant referred me to their accounting books they submitted into evidence. I was referred to the page for March 2023 which shows a line described as "Rent April 2023" for \$2,600.00.

The Tenant also testified that they provided two post-dated cheques to the Landlords for rent due May 1 and June 1, 2023 and the Landlords have not attempted to cash them.

In response to the Tenant's testimony, counsel for the Landlords submitted that NS never refused to provide receipts when the Tenant paid rent in cash. They submitted that the Tenant usually paid rent in installments, so it is out of the ordinary for them to pay in one amount.

The Landlords did receive post-dated cheques for rent for May and June 2023 from the Tenant, but they did not attempt to cash them. The reason for this was that previous cheques from the Tenant had bounced and the Landlords incurred fees from their bank for this. After the previous cheques had bounced, the parties came to a mutual agreement that rent would be paid in cash from then on.

The Tenant testified that their accounting books show an accurate history of rental payments. The Tenant referred me to the records for November 2022 which showed two payments for rent that month, which were both the full amount due, one at the start of the month and one at the end, as they had paid for both November 2022 and for December 2022 in advance.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the 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.

Though the Notice is not dated, the Tenant's Application and Landlords' counsel's submissions indicate the Notice was served in person on April 18, 2023. The Tenant submitted their Application to the Residential Tenancy Branch on April 19, 2023, which is within the 5 day time limit set out in section 46(4) of the Act.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Counsel for the Landlord submitted that the Tenant failed to pay rent due April 1, 2023. The Tenant's testimony conflicted with this assertion as they stated rent was paid in full, in cash, to Landlord NS who suddenly passed away soon after.

Counsel for the Landlords submitted the Landlords never denied a request from the Tenant for a receipt. The Tenant testified they had requested receipts repeatedly for tax purposes and they were not provided. Section 26(2) of the Act states that a landlord must provide a tenant with a receipt for rent paid in cash. Therefore, it is not incumbent on the Tenant to request receipts for rent paid, rather the Landlords are obligated to provide them. Given this, and in the absence of any evidence from the Landlords to indicate receipts were issued, such as a carbon copy or photograph of a receipt previously issued, I find on a balance of probabilities that the Landlords do not provide the Tenant with receipts for payment of rent in cash.

In the absence of receipts for rent payment, it appears to me that the only other documentary evidence of rent payments is the Tenant's accounting books. Over a year of financial records were submitted into evidence by the Tenant. I found them to be reasonably detailed and, more importantly, reliable. I find the records of rent payments match with the rent increases throughout the tenancy that were agreed by both parties.

Therefore, I give the Tenant's accounting books considerable weight in determining if rent due April 1, 2023 was paid by the Tenant.

I found the testimony of the Tenant regarding the payment of rent to be detailed and precise and therefore I afford it significant weight. The Tenant was able to set out the events leading up to NS visiting the property, what transpired while NS was at the property and recalled the denomination of the cash their wife gave to NS. I give significant weight to the Tenant's argument that paying in one lump sum and in advance, rather than installments, was not out of the ordinary, given this occurred as recently as November 2022.

Though counsel for the Landlords submitted correspondence from the Tenant confirmed they did not pay rent, I disagree with this assertion. I find the note from the Tenant written on a sales invoice dated May 14, 2023 reads "I paid [Landlord NS] 2600 cash March 26/23". The other correspondence from May 14, 2023 makes no reference to rent payments at all. I find that no other evidence presented to me indicates an admission of non-payment of rent on the Tenant's part.

Counsel for the Landlords submitted NS had told MS the Tenant had not paid rent for April 2023 and that the Tenant had said to MS on April 10, 2023 they had not paid rent for April 2023, MS was not called as a witness to verify this submission. As such, I can not afford it significant weight.

I find the text message exchange between the Tenant and MS on April 13, 2023 to be very brief and I find I can not give significant weight to this evidence. I find the Tenant replies "no" when asked to bring rent to MS. The exchange lacks details such as which month's rent is being discussed. The Tenant's testimony was clear in stating that rent was paid in cash on March 26, 2023 so I find the Tenant's response to the message from MS to be in keeping with the situation, albeit brief, given that they assert they had already paid rent.

I find the text message exchange must also be viewed in context with the telephone conversation between the Tenant and MS that took place soon after on the same date. I find the video footage of the conversation also does not contain any admissions by the Tenant that rent was not paid. I find the Tenant is heard saying "I paid the rent every month". Though the Tenant appears to get angry after the issue of rent is raised, I find this does not constitute an admission of non-payment of rent and the Tenant goes on to

speaking about repairs in the rental property which appear to me to be the source of the Tenant's anger.

I do not give significant weight to the argument of Landlords' counsel that the Tenant is taking advantage of the unfortunate situation regarding the death of NS. I find there was no evidence presented to me that indicated there was a history of the Tenant paying rent late, that any previous 10 Day Notices to End Tenancy for Unpaid Rent had been issued to the Tenant, or that the Tenant was in any way averse to paying rent.

Landlords' counsel submitted that the Tenant had not paid rent for May or June 2023, though confirmed the Tenant had provided the Landlords with post-dated cheques for these rent payments which further indicates to me the Tenant's willingness to pay rent.

Given the above, I find, on a balance of probabilities, that the Tenant did pay rent due April 1, 2023. Therefore, I am not satisfied that, on a balance of probabilities, the Notice was given for a valid reason, namely, the non-payment of rent.

Additionally, I find the Notice is not signed or dated and so is in breach of section 52(a) of the Act which states that in order to be effective, a Notice to End Tenancy must be signed and dated by the landlord.

Therefore, I grant the Tenant's Application. The Notice is canceled and is of no force or effect. The tenancy continues.

### Conclusion

The Application is granted. The tenancy continues.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee.

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 22, 2023

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Residential Tenancy Branch