



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding VANTAGE WEST REALTY agent for 1318479 BC LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, FFL  
                              CNR, FFT

### Introduction

This hearing convened as a result of Cross Applications. In the Landlord's Application filed on January 26, 2023, the Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities issued on January 7, 2023 (the "Notice") as well as recovery of the filing fee. In the Tenant's Application filed on February 9, 2023 the Tenant sought an Order canceling the Notice as well as recovery of the filing fee.

The hearing of the Applications was scheduled for teleconference at 9:30 a.m. on June 8, 2023. Both parties called into the hearing. The Tenant called in on his own behalf. The Landlord was represented by T.G., the Property Manager, as well as the owner, G.A. Those in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession and monetary compensation from the Tenant?
3. Should either party recover the filing fee?

### Background and Evidence

The tenancy agreement provided in evidence indicated as follows: the tenancy began February 1, 2022; monthly rent was \$1,146.95 and the Tenant paid a \$550.00 security deposit.

As the name of the Landlord on the tenancy agreement and the Notice was different, the Property Manager gave testimony as to the ownership of the property. He confirmed that although the agreement provided that the tenancy began February 1, 2022, prior to that date the Tenant was living in the rental unit. The property sold from K.M. and J.M. to the owner, G.A., on March 1, 2023, who then transferred the ownership to the company (named as Landlord on these Applications) on or about March 2, 2023.

The Tenant failed to pay rent as of January 7, 2023 such that the Landlord issued the Notice. At that time \$2,293.90 was outstanding. The Notice was served on the Tenant by posting to the rental unit door on January 7, 2023.

The Tenant failed to pay the full amount outstanding and paid \$2,300.00 on January 16, 2023. The Landlord issued a receipt for these funds and indicated it was payment for use and occupancy only. The Agent confirmed that the Tenant paid \$1,160.00 on February 8, 2023. The Tenant failed to pay rent for March, April, May and June such that the outstanding amount of rent as of the date of the hearing was \$4,637.47.

In reply the Tenant testified as follows. He confirmed the sum of \$4,637.47 was outstanding as of the date of the hearing. He further confirmed that he has not paid rent since February 8, 2023. The Tenant stated that he did not pay rent as required as he was hoping the owner would compensate him for his time to maintain the yard.

The Tenant stated that he was aware the property had sold and was aware that he was to pay his rent to the new owner through the management company, V.W.R.

### Analysis

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

#### **Landlord's notice: non-payment of rent**

**46** (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

**Rules about payment and non-payment of rent**

**26** (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent. While he may have hoped to be compensated for some of his work done on the property, this does not entitle him to withhold rent. I find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that they served the Notice on the Tenant on February 7, 2023 by posting to the rental unit door. Documents served this way are deemed served three days later such that I find the Tenant was served as of February 10, 2023.

I find that the Tenant did not pay the outstanding rent within the five days required by section 46(4) and did not have a legal reason to withhold rent. I therefore find the Notice is valid and dismiss the Tenant's request that I cancel the Notice. Having been unsuccessful, I also dismiss his claim for recovery of the filing fee.

I have reviewed the Notice and find that it complies with section 52 in terms of form and content; consequently, and pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Tenant agreed that he owed \$4,637.47 in outstanding rent as of the time of the hearing. As such, I award the Landlord compensation for this unpaid rent as well. Having been successful in this Application I also grant the Landlord recovery of the filing fee. I find that the Landlord has established a total monetary claim of \$4,737.47 comprised of \$4,637.47 in outstanding rent and recovery of the \$100.00 filing fee. Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$550.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$4,187.47**. The Landlord must serve this Order on the Tenant and may file and enforce the Order in the B.C. Provincial Court.

### Conclusion

The Landlord is entitled to an Order of Possession and monetary compensation for unpaid rent and recovery of the filing fee. The Landlord may retain the Tenant's security deposit towards the amounts awarded and is granted a Monetary Order for the balance due.

The Tenant's application is dismissed without leave to reapply.

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: July 5, 2023

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Residential Tenancy Branch