



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding TOP VISION REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RPP, FFT, OPR, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the Tenants' May 12, 2023 application and the Landlord's June 9, 2023 application, pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- An order for the Landlord to return the tenant's personal property, pursuant to section 65.
- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55.
- A monetary order for unpaid rent.
- An order for damages/compensation for the Landlord, pursuant to section 67.
- An authorization to recover the filing fee for this application, under section 72.

### Preliminary Issue

- Tenants' Application to have the Landlord return personal property and the Landlord's Application for compensation for monetary loss.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenants and the Landlord indicated several matters of dispute on their Application for Dispute Resolution, the most urgent is 10-Day Notice. I find that these additional claims on these Applications for Dispute Resolution do not sufficiently relate to be determined during these proceedings. Therefore, only the issues relating to the 10-Day notices are discussed below. The Tenants' application to have the Landlord return personal property and the Landlord's application for compensation for monetary loss are dismissed with leave to reapply.

### Issues to be Decided

Should the Landlord's 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and Monetary Order?

Are the Tenants or the Landlord entitled to recover the filing fee for their application?

### Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenancy began January 27, 2023
- Rent is \$1,600.00 a month and is due on the 27<sup>th</sup> of each month.

The Landlord issued the 10-Day Notice on May 31, 2023 for unpaid rent of \$1,934.20. The Tenants application was to dispute a 10-Day Notice that was issued on May 9, 2023 for unpaid utilities. The Landlord's Agent CC (the "Landlord's Agent") advised that the Tenants paid for the utilities listed on the May 9, 2023 10-Day Notice. Since the Tenant paid the outstanding amount and the Landlord's Agent advised they are no longer seeking enforcement of the 10-Day Notice from May 9, 2023, I will consider that 10-Day Notice cancelled. The Landlord's application is based on the 10-Day Notice served on May 31, 2023 (the "Unpaid Rent 10-Day Notice").

The Tenants were the previous owners of the rental unit. The Landlord's Agent testified that the tenancy agreement between the parties was vague and was a line added to the contract of purchase and sale. The tenancy agreement did not state that a security deposit or pet deposit needed to be paid, but the Landlord's Agent testified that a text was sent to the Tenants on the day the tenancy began asking them to pay a \$800.00 security deposit and a \$800.00 pet damage deposit (the "Deposits"). The Landlord's Agent further stated that the Deposits were e-transferred by the Tenants and the rent was taken from the statement of adjustments. The Landlord's Agent pointed to the Tenants' rent ledger in support of this.

The Landlord's Agent stated that when February 2023 rent was due, the Tenants stated the Deposits can be put towards rent. The Landlord's Agent argued that this was never agreed to by the Landlord and the Tenants made a unilateral decision to do this. The Landlord's Agent argued the \$1,600.00 of rent is still owed for February 2023.

The Tenant AX argued that the tenancy agreement never stated they had to pay the Deposits. Additionally, they argued that a person named XX asked them to pay the Deposits and that person is not listed as an owner of the property. The Tenant AX stated they paid the Deposits but when they found out XX was not the owner of the property, they believed they shouldn't have paid those amounts and applied it towards February 2023 rent. The Tenant AX went on to state the owner of the property JW stated they didn't have to pay any deposits.

The Landlord's Agent clarified that while JW is listed on title, JW (the "Property Owner") and XX are partners who work together. The rental unit is managed by the Landlord's Agent who was hired by the Property Owner and XX.

The Landlord's Agent also testified that the Tenants unilaterally decided to deduct \$336.00 from May 2023 rent because they had to pay a fee to have their internet service reinstated. The Landlord's Agent testified that the contract of purchase and sale required the Property Owner to takeover the TELUS service and the service was not properly transferred. The Tenants had to pay \$337.00 to TELUS to have their internet reinstated. The Landlord's Agent argued that the Landlord never agreed to this deduction from rent and again this was unilaterally decided by the Tenants.

The Tenant AX testified that they called TELUS on March 17, 2023 to have the account switched to the Property Owner. The Tenant AX stated that they went without internet for several weeks and when they called TELUS to find out what happened they were informed the Property Owner cancelled their internet. Tenant AX had to pay to have their internet account reactivated. The Tenant AX argued that they deducted this amount from May 2023 rent because the Landlord was supposed to pay for the internet and didn't.

### Analysis

#### **Should the landlord's 10-Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?**

The Tenant AX argued that they were not required to pay Deposits because the person who asked them to pay was not the owner of the property. Section 1 of the Act provides a definition for landlord, which states that a landlord is the owner of the rental unit, the owner's agent or another person who on behalf of the landlord permits occupation under a tenancy agreement or exercises and performs duties under this Act, the

tenancy agreement or a service agreement. This provides a broad definition of landlord and does not require a landlord to be the person listed on title. I accept the testimony of the Landlord's Agent that XX and the Property Owner are partners. I find that XX was authorized to act as the landlord and request the Deposits be paid.

The Tenant AX also argued that the Property Owner stated they didn't need to pay the Deposits yet didn't provide anything in support of this claim. Considering the importance of not having to pay the Deposits the Tenant AX should have gotten something in writing to support this. Additionally, the Landlord's Agent stated that they met with the Property Owner prior to this hearing and it was never mentioned that the Deposits didn't need to be paid. I find that the Deposits were required to be paid.

Additionally, the Tenants did not have the authority to unilaterally apply the Deposits towards rent. As stated in Policy Guideline 17, a tenant can only apply the security deposit towards rent with the landlords written consent. I find that the Tenants were not entitled to apply the Deposits to February 2023 rent.

The Tenant AX also argued that they were entitled to deduct the \$336.00 TELUS fee because the Landlord was not providing internet. As stated in section 26(1) of the Act, a tenant is still required to pay rent when it is due even if a landlord is not complying with the Act, regulations or tenancy agreement. Furthermore, the tenancy agreement is silent on who is required to pay for internet. I find that the Tenants were not authorized to deduct \$336.00 from May 2023 rent.

Therefore, I find on a balance of probabilities that the Unpaid Rent 10-Day Notice was issued for the valid reason of non-payment of rent. Since the Tenants did not establish any legal reason for withholding rent, I dismiss the Tenants' application to dispute the Unpaid Rent 10-Day Notice, without leave to reapply. Based on the above findings, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act.

### **Is the Landlord entitled to a Monetary Order for unpaid rent?**

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a Landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the Landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

I accept the testimony of the Landlord's Agent that as of May 31, 2023, the date the Unpaid Rent 10-Day Notice was issued, the Tenants failed to pay rent in the amount of \$1,934.20. The Unpaid Rent 10-Day Notice and the Tenants' rent ledger also clearly states the amounts owed. I find the Tenants breached the Act when they failed to pay rent in February 2023 and a portion of rent in May 2023.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$1,934.20

#### **Who is entitled to recover the filing fee?**

Because the Landlord was successful, I order the Tenants to pay the Landlord \$100.00 in respect of the filing fee in accordance with section 65(1) of the Act. Because the Tenants were not successful in their application, I decline to grant them the filing fee.

#### Conclusion

The Tenants' application for cancellation of 10-Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$2,034.20** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 55 of the Act	\$1,934.20
Cost of the filing fee	\$100.00
<b>Total Amount</b>	<b>\$2,034.20</b>

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenants**. Should the Tenants or anyone on the premises fail to

comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

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 10, 2023

---

Residential Tenancy Branch