



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: CNR, MNRT, MNDCT, DRI, OLC, FFT  
Landlord: OPL, MNRL, FFL

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Landlord's application concerning a 10-Day Notice to End Tenancy for Unpaid Rent (Notice). The Tenant applied to cancel the 10-Day Notice, and also requested reimbursement for a rent increase agreed to by the parties; for compensation related to yard work performed at the rental unit; reimbursement for emergency repairs; that the Landlord comply with the Act; and, reimbursement of the filing fee.

The Landlord also issued on January 15, 2023 a Two-Month Notice to End the Tenancy for Landlord's use of the rental unit. The Landlord requested an order of possession, a monetary order for unpaid rent to date, and recovery of the filing fee.

### **Issues to be Decided**

1. Is the Tenant entitled to a cancellation of the Notice to End Tenancy?
2. Is the Landlord entitled to an Order of Possession?
3. Are either party entitled to a monetary award?

### **Background and Evidence**

The tenancy commenced on April 15, 2019 for a fixed term of one year and thereafter was month-to-month. The monthly rent, due on the 15<sup>th</sup>, was initially \$1,500.00 plus utilities which the parties agreed averaged \$50.00 per month. The Tenant paid a security deposit of \$750.00 and pet deposit of \$750.00, which the Landlord continues to hold in trust.

The Landlord issued the 10-Day Notice on May 1, 2023 with an effective date of April 30, 2023. The 10-Day Notice was served to the Tenant in person. In addition to the 10 Day Notice, the Landlord served a Two-Month Notice on January 15, 2023. The amount of unpaid rent on the 10-Day Notice is \$4,500.00 for rent due February, March and May, 2023, and unpaid utilities in the amount of \$150.00 for the same time period. The 10-Day Notice did not provide for April 2023 rent. The

The Two-Month Notice was issued January 15, 2023, indicates an effective date of April 30, 2023. The basis for the Two-Month Notice is use of the rental unit by the Landlord and the Landlord's spouse. The Landlord testified that the rental unit was a disability suite (previously renovated for her elderly mother's use) and her spouse, who had suffered a stroke and sustained mobility issues required the immediate use of the suite. The Tenant did not contest the Landlord's Two-Month Notice and did not dispute the Landlord's stated intention for use of the rental unit for the Landlord and her spouse. The Landlord stated that she did not include the April rent in the Notice as this was the one-month's compensation due the Tenant. The Landlord testified that the Tenant did not pay April 2023 rent. However, the Landlord testified that because the Tenant did not move out at the end of April 2023, she wanted rent and utilities for that month as well included.

The Tenant disputed the amount of rent owed but stated she was not disputing the \$50.00 charge for utilities each month. The Tenant stated that any rent she owed should be set-off by the following:

- \$1,500.00 for a plumbing bill due to an "emergency repair";
- \$2,000.00 she paid for removal of bamboo in the garden;
- \$2,999.99 she calculated as being due for work she performed on the rental unit at an hourly rate of \$40.00 for shoveling snow, "watching the place" while the Landlord was traveling, and creating and maintaining a container garden; and,
- \$2,400.00 for overpaid rent for an "illegal rent increase" of \$300.00 per month for 8 months in 2022.

The Landlord contested each of these items as follows:

- The "emergency repair" plumbing bill was never paid by the Tenant and was sent to collection;
- The Tenant's portion of the cost for removal of bamboo in the garden was agreed-upon by the parties as evidenced by email correspondence between the parties;

- The \$2,999.99 set-off for maintenance and garden work was never negotiated with or agreed to by the Landlord; and,
- The \$300.00 per month increase in rent was initially suggested by the Tenant as \$1,000.00 per month to bring the rental value up to market standards, but was negotiated down by the Landlord who considered the \$300.00 monthly increase as more in keeping with market rates, again evidenced by email correspondence between the parties.

The Tenant testified she agreed to a \$300.00 monthly rental increase only if she were a “long-term tenant,” but did not define what this meant apart from the fact that she considered the rent increase “illegal” now that she faced eviction.

### Analysis

Section 52 of the Act sets out the requirements for a valid notice to end a tenancy. It requires that the notice be signed by the party giving the notice, that it provide the address of the rental unit, state the effective date of the notice, provide the reason and when given by the landlord, be in an approved form. A copy of the Notice is in evidence.

The 10-Day Notice was issued on the date rent was due with an effective date a day prior. A Notice for unpaid rent cannot issue until the day after rent is due; and the effective date can be no earlier than 10 days after the date of issuance. However, section 53 provides that if the effective date on the notice is incorrect, the effective date is deemed corrected to the earliest date applicable under the Act. In this case, the earliest date would be May 12, 2023. I find that with the deeming provision, the Notice was proper under the Act.

Section 26 of the Act provides that a tenant must pay the rent amount as provided in the rental agreement, whether or not the landlord has complied with the Act, the regulations or the rental agreement, unless the Tenant has a right under the Act to deduct all or a portion of the rent.

In this case, the Tenant failed to provide any evidence that the plumbing repairs were urgent or necessary, and failed to present any evidence that she had complied with section 33(3) in notifying the Landlord. More importantly, the Tenant did not provide proof of payment of the plumbing bill in the amount of \$1,500.00. Instead, the Landlord provided documentation from the plumber that the bill had been sent to collection. The

Tenant did not dispute this. I find the Tenant is not entitled to claim a set-off in the amount of \$1,500.00 for emergency repairs to the plumbing at the rental unit.

The Tenant also claimed \$2,000.00 for removal of bamboo from the property's garden. While it appears the Tenant paid this invoice, the Landlord submitted persuasive evidence that the Tenant had agreed to pay this amount prior to the work being undertaken. Further, the Landlord submitted evidence that she paid her portion for the bamboo removal as agreed upon by the parties. I find the Tenant is not entitled to claim \$2,000.00 for bamboo removal as a set-off against her rent obligation.

The Tenant also arbitrarily determines she is entitled to set-off \$2,999.99 from any rent owed the Landlord for gardening work the Tenant did, snow removal and/or "watching the place" while the Landlord was absent. These items are not addressed in the rental agreement. The Tenant provided no evidence that the Landlord had ever agreed to pay Tenant \$40.00 per hour for any of these tasks. The Tenant also did not provide a ledger or any documentation to support how her services were worth \$40.00 per hour, and how many hours devoted to each of these tasks and when. There is no evidence to support the Tenant's claim. I find the Tenant is not entitled to set-off \$2,999.99 for her services against any rent obligation.

The Landlord testified that the Tenant had not paid rent in the amount of \$1,500.00 and utilities of \$50.00 per month for February, March, April, May and June, 2023, totaling \$7,500.00 in rent and \$250.00 in utilities. The Tenant did not dispute the unpaid rent or utilities, instead taking the position she was entitled either not to pay rent or had set-offs (as discussed below). The Tenant did not provide a previous order from the Branch or refer to a specific section of the Act that would excuse her non-compliance with her obligation to pay rent.

I find the Tenant failed to pay rent and utilities in the amount of \$7,750.00 for the period February through June, 2023.

In this case, the Tenant failed to provide any evidence that the plumbing repairs were urgent or necessary, and failed to present any evidence that she had complied with section 33(3) in notifying the Landlord. More importantly, the Tenant did not provide proof of payment of the plumbing bill in the amount of \$1,500.00. Instead, the Landlord provided documentation from the plumber that the bill had been sent to collection. The Tenant did not dispute this. I find the Tenant is not entitled to claim a set-off in the amount of \$1,500.00 for emergency repairs to the plumbing at the rental unit.

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The Tenant claims the rental increase she offered and agreed to in the amount of \$300.00 per month was illegal. The Landlord submitted correspondence between the parties that the Tenant on her own initiative offered to pay \$1,000.00 rental increase per month but the Landlord would accept only \$300.00 per month as a reasonable increase considering market conditions.

There is no dispute between the parties that the Tenant paid the additional \$300.00 for the period April through November, 2022. The Tenant requests a set-off of \$2,400.00. Section 43 provides that a rent increase may only be made as provided for under the Act. The parties' rental agreement incorporates the Act's provisions concerning rent increases. The agreement between the parties, even if initiated by the Tenant, does not comply with section 43. The rental increase was not agreed to in writing by the Tenant. The email correspondence between the parties indicates that the Tenant offered the \$1,000.00 in additional rent per month but the Landlord considered \$300.00 to be a reasonable and fair adjustment to the rent. However, there is no agreement in writing provided by the Landlord in evidence that complies with section 43.

Therefore, I find the Tenant is entitled to a set-off in the amount of \$2,400.00 against outstanding rent and utilities she owes the Landlord.

As the tenancy is ending by way of the 10-Day Notice, I make no findings on the validity of the 2 Month Notice to End Tenancy.

### Conclusion

The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective July 31, 2023, with valid service of the Order on the Tenant. Should the Tenant fail to comply with the Order, the Order may be enforced as Orders of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$3,834.66 calculated as follows:

| Item  | Amount       |
|---|--------------|
| Unpaid rent & utilities February to June 2023 | 7,750.00     |
| Less amount of illegal rent increase          | (-2,400.00)_ |
| Less security deposit and interest            | (-1,515.34)  |
| <b>Total:</b>                                 | 3,834.66     |

As the Tenant was partially successful in her application, I find no party shall recover the filing fee.

I make no findings on the 2 Month Notice issued by the Landlord.

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 17, 2023

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Residential Tenancy Branch