



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, CNR, OLC, FFT (x2)

First Application:    CNL, FFT

Second Application: CNR, OLC, FFT

### Introduction

On April 17, 2023, the Tenant filed their Application at the Residential Tenancy Branch:

- a. to dispute the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice");
- b. for reimbursement of the Application filing fee.

On July 1, 2023, they submitted a second Application:

- c. to dispute the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice");
- d. for the Landlord's compliance with the legislation and/or the tenancy agreement;
- e. for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on August 1, 2023. Both parties attended the teleconference hearing.

The Landlord confirmed they received each Notice of Dispute Resolution Proceeding, served to them by the Tenant. For each Application, the Landlord stated they received the Tenant's evidence. The Tenant also confirmed they received the Landlord's evidence.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice?

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for either of their Applications, pursuant to s. 72 of the *Act*?

### Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion, and the outcome of this hearing, are set out in this decision.

The Tenant submitted a part of the tenancy agreement for the rental unit. The tenancy started on March 1, 2023, and the Landlord emphasized the tenancy was on a month-to-month basis. The rent amount was \$800 was payable on the first of each month.

The Landlord issued the 10-Day Notice on June 29, 2023. A copy of this appears in the Landlord's evidence, as provided to the Residential Tenancy Branch at the end of the hearing at my request. The first page of the document appeared in the Tenant's evidence.

The 10-Day Notice gives the end-of-tenancy date, on which the Tenant must move out, as July 13, 2023. Page 2 of the document shows the Landlord's indication that the Tenant failed to pay rent in the amount of \$800 on April 1, 2023.

On my inquiry in the hearing, the Landlord stated the Tenant stated they were entitled to one month's rent amount as compensation because of the Two-Month Notice. The Landlord served the Two-Month Notice to the Tenant on April 1, 2023. That Two-Month Notice provided the end-of-tenancy date was April 30, 2023.

In the hearing, the Tenant stated they had an agreement with the Landlord that April was rent-free, because of some stipulation in place in line with the Two-Month Notice.

The Tenant provided that they paid their rent in full as required for each of May, June, and July 2023.

The Landlord added to the Tenant's recall of their discussion about April rent, and granted that they would owe the Tenant one month rent-free in line with the Two-Month Notice. They added that ideally the final month of the tenancy would be rent-free. Even though the Tenant applied to the Residential Tenancy Branch to dispute the Two-Month Notice, they are still "supposed to be paying rent."

In the hearing, the Landlord confirmed that the Tenant did not pay rent for the month of April 2023.

### Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy "if rent is unpaid on any day after the day it is due." A landlord may issue a notice to end the tenancy effective "on a date that is not earlier than 10 days after the date the tenant receives the notice."

In this dispute the Landlord issued the 10-Day Notice to the Tenant on July 1, 2023. The Tenant challenged that 10-Day Notice formally through an additional Application to the Residential Tenancy Branch on July 1, 2023.

I find there is no record that the Tenant paid the April 2023 rent as required. They had no right to deduct any part of the rent for that month. The Tenant presumptively withheld the rent because of the Two-Month Notice; however, they did this without authority from the *Act*.

I conclude the Tenant did not pay the full rent amount, and they verified in this in the hearing.

The *Act* s. 26 applies, and the Tenant had no authorization in the form of an order from the Residential Tenancy Branch order to withhold payment of rent. Nor did they have

authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent within the time granted for that.

The Tenant was obligated to pay for rent in line with the tenancy agreement and had no right to reduce the amount unilaterally. This was a breach of the tenancy agreement, and s. 46(1) applies in this scenario. I dismiss the Tenant's Application for cancellation of the 10-Day Notice for this reason, and the tenancy is ending.

Under s. 55 of the *Act*, when the Tenant's Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession. On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession.

The *Act* s. 55(1.1) specifies that I must grant repayment of unpaid rent amount of \$800.

Given that the tenancy is ending by reason of the 10-Day Notice, the validity of the separate Two-Month Notice issued by the Landlord is not at issue. I order that document cancelled in its entirety. I dismiss this part of the Tenant's Application because the tenancy is ending for the reason of unpaid rent. Additionally, the Landlord's compliance with the *Act* and/or tenancy agreement is no longer at issue; therefore, I cancel this part of the

The Tenant was unsuccessful on both Applications; therefore, I make no award for reimbursement of the Application filing fees.

### Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, with leave to reapply.

I grant an Order of Possession to the Landlord, effective TWO DAYS after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$800, pursuant to s. 55(1.1) of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 2, 2023

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Residential Tenancy Branch