



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNR, FFT  
                             OPR-DR, MNR-DR, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant. The landlord's application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the tenant's application.

The tenant and an agent for the landlord attended the hearing, during which the tenant agreed to an order of possession in favour of the landlord effective at 1:00 p.m. on September 30, 2023, and the landlord agreed. Therefore, I make that order.

The parties agree that the landlord has provided all evidence to the tenant, but the tenant has not provided any evidence to the landlord. Therefore, the tenant's evidence is not considered in this Decision.

### Issue(s) to be Decided

The issue remaining to be decided is:

- has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on May 1, 2023 and expires on April 30, 2024, and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 is payable on the 1<sup>st</sup> day of each month. On April 22, 2023 the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the upper level is occupied by the owner. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on July 3, 2023 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated July 2, 2023 and contains an effective date of vacancy of July 10, 2023 for unpaid rent in the amount of \$1,300.00 that was due on July 1, 2023. The tenant has not paid any rent since the Notice was served, and arrears have accumulated to \$3,900.00.

The landlord's agent agrees that the security deposit of \$650.00 be retained by the landlord to offset the amount of the monetary claim.

**The tenant** testified that the landlord didn't want the tenant's boyfriend at the rental unit, and the tenant advised the landlord that the tenant was expecting a baby. The landlord stated that the rental unit was too small for 3 people, but it's a 2 bedroom unit. The tenant's boyfriend is black, so perhaps the landlord is racially motivated. The landlord always asked the tenant's boyfriend what he was doing there.

The tenant didn't want to pay rent for a place the tenant isn't welcome at.

The tenant agrees that the landlord should keep the \$650.00 security deposit in partial satisfaction of the claim for unpaid rent.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay the rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. In this case, the tenant does not dispute that rent hasn't been paid for July, August or September, 2023. If the landlord fails to comply with the *Act* or the tenancy agreement, the tenant may make a claim as against the landlord. However, I find that the landlord is entitled to recover the unpaid rent in the amount of \$3,900.00, and I dismiss the tenant's application.

I grant an order of possession in favour of the landlord effective September 30, 2023 at 1:00 p.m., by consent. The tenant must be served with the order which may be filed in the Supreme Court of British Columbia for enforcement.

Since the landlord has been successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

The parties agree that the landlord may keep the \$650.00 security deposit in partial satisfaction of the unpaid rent. Therefore, I order the landlord to keep the \$650.00 security deposit in partial satisfaction of the claim for unpaid rent, and I grant a monetary order in favour of the landlord for the difference in the amount of \$3,350.00 ( $\$3,900.00 - \$650.00 = \$3,250.00 + \$100.00 = \$3,350.00$ ). The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on September 30, 2023.

I further order the landlord to keep the \$650.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,350.00.

This order is final and binding and may be enforced.

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: September 07, 2023

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Residential Tenancy Branch