



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking 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 tenant and an agent for the landlord attended the hearing, and the landlord has provided an authorization for the agent to act on behalf of the landlord. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on May 1, 2017 and reverted to a month-to-month tenancy after November 30, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$2,750.00 was payable on the 1<sup>st</sup> day of each month, which has been increased, but the landlord's agent doesn't remember how much rent is, testifying that it is \$2,931.00 or something like that. On May 1, 2017 the landlord collected a security deposit from the tenant in the amount of \$1,375.00 as well as a pet damage deposit in the amount of \$1,375.00, both of which are still held in trust

by the landlord. The rental unit is the upper level of a house, and the lower level is vacant. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord's agent further testified that on July 4, 2023 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by handing it to the tenant's adult son. A copy of the first page only of the Notice has been provided by the tenant for this hearing. It is dated July 4, 2023 and contains an effective date of vacancy of July 17, 2023. The landlord's agent does not know how many pages were served, perhaps 2 or 4, but the reason for issuing it is that the tenant didn't pay full rent. The tenant was short \$200.00 for July or August, but can't remember.

**The tenant** testified that since the start of the tenancy, the landlord always left their own address blank on documents, and the tenant never met the landlord. The landlord's address on any communication is a restaurant, and the tenant doubts that the actual landlord even exists.

The tenant further testified that he withheld \$200.00 of rent due to an emergency. There was no time to notify the landlord; the garburator stopped and clogged the pipe on the sink. The dishwasher discharges into the garburator, and the tenant believes pressure from both caused a problem, and water leaked everywhere onto the kitchen floor, and the tenant repaired it. A copy of a receipt from Rona has been provided for this hearing, totaling \$409.92. It happened on June 30 or July 1, but the landlord said he won't accept the charges. It was an emergency, and the only amount of rent not paid to the landlord is half of the Rona bill, \$200.00, which the tenant believed to be fair. The tenant only has a number for the landlord's agent as an emergency contact, and the tenant texted him after making the repair.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The tenant has tried to make trouble all the time. The landlord's agent has cooperated with him and when he requests things, the landlord's agent responds in time. The tenant is very hostile and difficult to work with. The landlord's agent does not understand why he now doesn't communicate.

#### SUBMISSIONS OF THE TENANT:

None

### Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the tenant has provided the first page only of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the landlord has not provided any evidence. Therefore, I cannot be satisfied that any notice given was in the approved form, and I cancel it.

The *Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. I advised the parties that I would include in this Decision the sections of the *Residential Tenancy Act* that applies to emergency repairs. In the case of an emergency, that law states as follows:

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
- (a) claims reimbursement for those amounts from the landlord, and
  - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Since the landlord has not established that the Notice was given in the approved form, I cancel it and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with this application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order upon the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant is permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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 11, 2023

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Residential Tenancy Branch