



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNR, FFT, RR

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

### Issue(s) to be Decided

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

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord provided a copy of a 10 Day Notice along with a Proof of Service RTB-34 form. This 10 Day Notice was signed September 7, 2023, with a move out date of September 20, 2023. The requested rent amount was \$4032.06. The RTB-34 was signed by a witness and stated that this 10 Day Notice was posted on the tenants' door on September 7, 2023.

The landlord agrees that the unpaid rent that was due on September 1, 2023, was received on September 14, 2023.

The landlord provided a copy of a second 10 Day Notice along with a copy of registered mail receipts stamped October 2, 2023. This 10 Day Notice was signed October 2, 2023, with a move out date of October 18, 2023. The requested rent amount was \$2032.06.

The landlord affirms that he received a partial payment for October 2023 of \$2000.00 prior to serving this 10 Day Notice, but that the remaining \$2032.06 is still unpaid.

The tenants affirm that they are withholding the \$2032.06 of rent as compensation for work done by an electrician to fix electrical issues in the rental unit that were caused by mice. The tenants provided two invoices, the first dated September 22, 2023, for \$1260.00 and the second dated October 2, 2023, for \$825.00.

Both parties agree that there is an ongoing rodent issue in the rental unit. The landlord provided copies of a pest control inspection report from March 2023 describes a rodent infestation and states the need for the tenants to declutter the home and garage as the condition of the rental unit provided food and shelter to the rodents and made access to areas of the rental unit challenging, all of which made it difficult to eradicate the rodents. A pest control update report in June 2023, repeated the same concerns.

A second pest control inspection report from July 2023, again stated the need to declutter the home and included pictures of multiple rooms where most of the floor was covered with objects.

The landlord affirms that rodent mediation is ongoing and the pest control company is doing weekly visits.

The landlord provided a copy of an email thread conversation with the client that spanned from October 2, 2023, to October 13, 2023.

In the starting email dated October 2, 2023, the landlord sent a copy of the October 2, 2023, 10 Day Notice to the tenant. The email states that only \$2000.00 of October's rent was received.

The tenant replied the same day, thanking the landlord for the update and asking for confirmation that rent for September 2023 had been received. The landlord replied, still

on October 2, 2023, that rent for September 2023 had been received on September 14, 2023.

Over the course of the next 5 emails, the ongoing weekly visits from the pest control company were discussed, along with gardening services.

The tenant in an email dated October 12, 2023, states, “please note that any services that are not provided in a reasonable timeframe do not require approval – especially emergency services. We also note that your client is in breach of contract on several ongoing issues. On these two issues, we certainly won’t be asking for approvals”.

The landlord in his response on October 12, 2023, indicates he thinks the emergency services the tenant is referring to are the gardening and rodent issues that was discussed previously.

In the tenant’s response on the same day, they write, “to be clear, we never identified those as the emergency services required...your refusal to reimburse emergency services that haven’t been dealt with really is why we’ve had to take it from the rent.”

There was the first time the tenant stated that they had withheld rent due to emergency services being required. However, in this email the tenant doesn’t clarify what is meant by “emergency services”.

Over the final four emails of this exchange the landlord asks twice, once in each of two different emails, for clarification of what is meant by “emergency services”. The tenant, in both responses, never clarifies what the necessary “emergency services” are.

The tenant, over this entire email exchange from October 2 to October 13 of 2023 never mentioned any electrical issues being present in the home, nor having any electrical repairs done.

### Analysis

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

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or

dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

The first 10 Day Notice was posted on the tenants' door on September 7, 2023. I find that it was duly served to the tenants on September 10, 2023, and that the tenant had until September 15, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The landlord confirms receiving, on September 14, 2023, all unpaid rent. Therefore the 10 Day Notice of September 7, 2023, is cancelled and of no force or effect.

The 10 Day Notice of October 2, 2023, was for \$2032.06 that was due on October 1, 2023. The tenants confirm that this remains unpaid.

I find that the tenants do not have a valid reason to withhold rent. Therefore, the tenant's application for cancellation of the landlord's October 2, 2023, 10 Day Notice to End Tenancy for Unpaid Rent, under sections 46 and 55 of the Act is dismissed, without leave to reapply.

**Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession.

**Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?**

Section 27 of the Act states that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living

accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is the same as the reduction in value of the tenancy.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

As the tenant affirms withholding rent as compensation for emergency electrical repairs they had done and not because of terminated or restricted service or facility, the tenant's application for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act is dismissed, without leave to reapply.

Regarding the electrical repairs that the tenants affirm they had done. Electrical repairs can be an emergency repair under section 33 of the Act. However, before the tenant can make the repairs themselves, they must follow the procedure set out in the Act. This includes making at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs and, following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The landlord affirms they were not notified of the electrical issues. The tenants did not mention any electrical issues or repair work in the email chain provided by the landlord where the tenants received a copy of the second 10 Day Notice. The tenants did not provide sufficient evidence that they followed the procedures set out in the Act as necessary when emergency repairs are done by the tenant.

Therefore, the issue of withholding rent is conclusively dealt with, and I find the tenants had no valid reason to withhold rent. The tenant's claim is dismissed, without leave to reapply.

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

I find that the landlord has established a claim for \$2032.06 in unpaid rent for 2023. Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 55 of the Act.

**Is the tenant entitled to recover the filing fee for this application from the landlord?**

As the tenant was not successful in this application, the tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord **effective November 30, 2023, after service of this Order on the tenant(s)**. Should the tenant(s) 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.

I grant the landlord a Monetary Order in the amount of **\$2132.06** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$2032.06
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$2132.06</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

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: November 25, 2023

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Residential Tenancy Branch