



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes   CNR, MNDCT, OLC**

### **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 for the landlord to compensate the Tenant for monetary loss or other money owed
- an order for the Landlord to comply with the Act, regulation and/or the tenancy Agreement

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

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act

### **Issue(s) to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to a Monetary Order for items purchased in relation to maintenance of the property?
- Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulation and/or the tenancy agreement?

## **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

Both parties acknowledged service of the Notices of Dispute and Evidence.

## **Preliminary Matters**

Numerous individuals for the Landlord were referenced both within the applications for dispute as well as during the hearing.

For clarity sake, H.L. attended the hearing and identified themselves as the Rental Property Manager, working for P.R.; P.R. was named as the Landlord's agent within the Tenancy Agreement.

The Tenant chose to withdraw from the hearing prior to the hearing concluding. The conference call remained open for the Tenant to return, however they did not.

## **Background and Evidence**

I have reviewed all accepted evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties provided a copy of the Tenancy Agreement. The following within the Agreement are relevant to the issues under dispute:

- The Tenancy commenced on February 18, 2023
- Rent was \$2150.00 per month, to be paid on the first day of each month
- A Security Deposit of \$1075.00 was paid prior to occupancy
- A Pet Damage deposit of \$1075.00 was paid prior to occupancy
- Yard work was to be the responsibility of the Landlord
- The Tenant was responsible for 40% of the gas, bc hydro, and water bill; however, this was to be paid via one year of post dated cheques in the amount of \$200.00 per month, which was an estimation of the costs. Should the actual bill be less than the estimated amount the Landlord was to refund any credit after 12 months or when the tenant vacated. Should the actual amount be greater then the Tenant would be required to pay the difference.

The Tenant stated that the upper unit within the home had been promised to him and his family, with the agreement that they would maintain the yard. No Tenancy Agreement was signed, no evidence other than the Tenant's statement was provided.

The Tenant states that the Landlord did not follow through on this promise to rent them the upper unit, and now owes them for the purchase of tools to maintain the property.

The Tenant states that the Landlord has not maintained the home. The Tenant advised that they did not make any applications to the RTB to address the concerns, rather has made requests to the Landlord.

It is not disputed that the Tenant refuses to pay the rent due to the Landlord failing to maintain the home and provide copies of the hydro bills.

It is not disputed that the Tenancy Agreement states that the Tenant was to pay \$200.00 per month towards hydro bills, which would be reviewed for accuracy after 12 months of Tenancy, with the provision that any inaccuracy would be corrected as required.

The Landlord submits that rent in the amount of \$2150.00 per month and utilities in the amount of \$200 per month is owed for September, October and November 2023.

## **Analysis**

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### **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).

Section 46(1) of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Tenant does not dispute that they have rental arrears; however, submits that their refusal to pay is due to the Landlord failing to maintain the home and provide copies of the hydro bills.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

For the above reasons, the tenant's application 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 is dismissed, without leave to reapply. An Order of Possession is to be provided to the Landlord.

Section 55(1.1) of the Act states that if an application is in relation to a landlord's notice to end a tenancy due to *non-payment of rent*, and the Notice is upheld, the director must grant an order requiring the payment of the unpaid rent.

The following is outstanding for rent and utilities:

Month	Rent	Utilities	Total
September	\$2150.00	\$200.00	\$2350.00
October	\$2150.00	\$200.00	\$2350.00
November	\$2150.00	\$200.00	\$2350.00
		<b>Total</b>	<b>\$7050.00</b>

**Is the Tenant entitled to a Monetary Order for items purchased in relation to maintenance of the property?**

The Tenant did not provide any evidence to support their assertion that they were required to purchase equipment as a term of their Tenancy. Additionally, no evidence was provided in regard to the amount paid for the equipment claimed for.

For the above reasons the Tenant's application for a Monetary Order for items purchased in relation to maintenance of the property is dismissed.

**Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulation and/or the tenancy agreement?**

As the tenancy is to end, this issue is moot.

## Conclusion

I grant an Order of Possession to the landlord **effective two (2) days 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 **\$7050.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and utilities under section 67 of the Act	\$7050.00
authorization to retain all or a portion of the tenant's security deposit (calculated with interest) in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$ <b>\$2181.36</b>
<b>Total Amount</b>	<b>\$4868.64</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.

The Tenant's application for an order of compensation for monetary loss or other money owed is dismissed, without leave to reapply.

The Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy Agreement is dismissed, without leave to reapply.

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 07, 2023

---

Residential Tenancy Branch