



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's Application for Dispute Resolution (Application) filed under the *Residential Tenancy Act* (the "Act") on October 11, 2023, seeking:

- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- Recovery of costs incurred to complete emergency repairs under section 33 of the Act;
- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order that the landlord complete repairs;
- An order allowing them and their guest access to the rental unit;
- An order for the landlord to provide services or facilities required by the tenancy agreement or law; and
- An order for the landlord to comply with the Act, regulations, or tenancy agreement.

This hearing also dealt with the landlords' Application filed under the Act on October 31, 2023, seeking:

- Enforcement of the 10 Day Notice and an Order of Possession;
- Recovery of unpaid rent;
- Compensation for damage to the rental unit;
- Authorization to retain all or a portion of the tenant's security deposit and/or pet damage deposit in partial satisfaction of amounts owed; and
- Authorization to recover the filing fee for this application from the tenant.

Agent L.B. and three witnesses, W.L., D.Z., and S.L. attended the hearing for the landlord.

Tenant E.P. attended the hearing for the tenants.

## **Service of Notices of Dispute Resolution Proceeding (Proceeding Packages)**

The parties acknowledged receipt of each others Proceeding Packages. Although the tenant had no concerns regarding service, the agent argued that the landlord was served late.

Residential Tenancy Branch (Branch) records indicate that the tenant's Proceeding Package was emailed to them on October 12, 2023. The tenant stated that it was subsequently sent to the landlord by registered mail on October 17, 2023, and the agent acknowledged receipt the following day. I asked the tenant about the delay in service, and the tenant stated that only a PO Box was listed as the landlord's address for service on the tenancy agreement, and Canada Post refused to send the registered mail to that address, as a signature was required for delivery. As a result, the tenant stated that there was a delay in sending the registered mail, as they had to get another address for service from the landlord.

The agent agreed that the address for service for the landlord listed on the tenancy agreement is a PO Box. Although the agent argued that there should have been no issues, as the tenant had sent them registered mail at the PO Box before, I disagree. I find it reasonable to conclude, as stated by the tenant, that Canada Post would refuse to send mail requiring a signature to a PO Box, where no signature could be received upon delivery. Further to this, whether registered mail was received by the landlord at the PO Box in the past, or not, as set out above I am satisfied that on this occasion, Canada Post refused to send it there. As a result, I find that the delay was both reasonable on the part of the tenant, and the result of a conflict between the acceptable service methods under section 89(1) of the Act, and the address used by the landlord as their address for service in the tenancy agreement.

I therefore order, pursuant to section 71(2)(b) of the Act, that the tenant's Proceeding Package was sufficiently served on the landlord for the purposes of the Act on August 18, 2023. The hearing of both Applications therefore proceeded as scheduled.

## **Preliminary Matters**

### **Severing of Unrelated Issues**

In their respective Applications the parties sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Residential Tenancy Branch Rules of Procedure

(Rules) states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The parties both made applications in relation to the 10 Day Notice and agreed at the hearing that the tenant is still occupying the rental unit. I therefore found it a priority to deal with the matter of possession, the validity of the 10 Day Notice, and the payment of rent. I therefore exercised my discretion to dismiss claims not sufficiently related to the 10 Day Notice or the payment of rent, with leave to reapply.

As a result, the hearing proceeded based only on the following claims:

- The tenant's claim for cancellation of the 10 Day Notice;
- The landlord's claim for enforcement of the 10 Day Notice by way of an Order of Possession;
- The landlord's claim for recovery of unpaid rent;
- The tenant's claim that they were entitled to withhold rent under section 33 of the Act after having completed emergency repairs;
- The landlord's claim for retention of the security deposit in partial satisfaction of the amount owed for outstanding rent; and
- The landlord's claim for recovery of their filing fee.

### **Late Application**

The parties agreed that the tenant was personally served with the 10 Day Notice on October 5, 2023. Section 46(5) of the Act states that within 5 days after receiving a 10 Day Notice, a tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the 10 Day Notice by filing an Application seeking its cancellation with the Branch.

Although the tenant submitted their Application and evidence to the Branch on October 10, 2023, they did not pay the filing fee and sought a fee waiver. Their documentation supporting the need for a fee waiver was not submitted to the Branch until October 11, 2023. Although the fee waiver was approved, pursuant to rule 2.6 of the Rules, the tenant is not considered to have made their Application seeking dispute of the 10 Day Notice until October 11, 2023, the date when all documents to support the fee waiver were submitted to the Branch.

October 11, 2023, is more than 5 days after the date the tenant received the 10 Day Notice. The tenant also acknowledged that the rent shown as outstanding on the 10 Day Notice has not been paid, and that no rent has been paid for November.

In their Application the tenant did not seek an extension under section 66(1) of the Act to the 5-day time limit set out under section 46(5) of the Act. Further to this, even if they had properly sought an extension, they stated at the hearing that they applied to dispute the 10 Day Notice late because they thought that they had 5 business days to do so. A misunderstanding of the applicable time limits is insufficient to meet the very high bar required to extend a time limit under section 66(1) of the Act due to “exceptional circumstances”. As a result, I find that even if the tenant had properly sought the extension, which they did not, I could not grant them one.

Section 66(2)(b) of the Act allows me to extend the time period to pay rent under section 46(4) of the Act if the tenant has deducted the unpaid amount because they believed that the deduction was allowed for emergency repairs. Although the tenant stated that they withheld \$1,000.00 of rent under section 33 of the Act, the parties agreed that rent was \$2,550.00 per month. As a result, I did not find it appropriate to extend the time limit under section 46(4) of the Act, as even if the tenant believed they had the right to withhold \$1,000.00 of the \$2,550.00 owed, they acknowledged having no right under the Act to withhold or deduct the remaining \$1,550.00 set out on the 10 Day Notice.

As the tenant failed to either pay the rent owed or dispute the 10 Day Notice within the time limit set out under section 46(5) of the Act, and neither section 66(1) nor 66(2)(b) of the Act apply, the tenant was conclusively presumed under section 46(6) of the Act to have accepted the 10 Day Notice and required to comply with it. As a result, I dismissed their Application seeking its cancellation without leave to reapply.

The parties then chose to resolve the remaining matters via settlement under section 63 of the Act, as set out below.

## **Settlement**

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the Act, I could assist the parties to reach an agreement, which would be documented in my decision and any supporting order(s).

During the hearing, the parties mutually agreed to settle the remaining matters of outstanding rent, possession of the rental unit, the tenant's claim for compensation under section 33 of the Act, the security deposit, and recovery of the landlord's filing fee as follows:

1. The parties agree that the tenant currently owes \$5,100.00 in outstanding rent for October and November of 2023.
2. The parties agree that the tenant may deduct \$1,000.00 from this amount for the cost of emergency repairs completed under section 33 of the Act.
3. The parties agree that the landlord may retain the tenant's \$1,275.00 security deposit, in full, in partial satisfaction of the balance of outstanding rent owed.
4. The parties agree that the tenant therefore still owes the landlord \$2,825.00 in outstanding rent for the period up to and including 1:00 P.M. on November 30, 2023.
5. The parties agree that if the tenant pays the \$2,825.00 in outstanding rent owed to the landlord by midnight on November 20, 2023, the tenant can remain in the rental unit until 1:00 P.M. on November 30, 2023.
6. The parties agree that the above noted rent is to be paid to the landlord by e-transfer at the email address listed for this purpose on the cover page of this decision.
7. The parties agree that if the tenant does not pay the full \$2,825.00 owed to the landlord by midnight on November 20, 2023, the tenant must vacate the rental unit by 1:00 P.M. the following day, November 21, 2023.
8. The parties agree that this constitutes full and final settlement of all the remaining matters between them as listed above. It does not constitute settlement of matters dismissed with leave to reapply under rule 2.3 of the Rules, or matters not claimed by the parties in either of the Applications before me.

## Conclusion

I order the parties to comply with the terms of the mutual settlement agreement reached between them, as described above.

In support of the settlement described above, pursuant to section 63 of the Act, and with the agreement of the parties, I grant the landlord a conditional Order of Possession. If the tenant pays the landlord the \$2,825.00 in rent owed on or before midnight on November 20, 2023, in compliance with the terms of the above noted settlement agreement, the Order of Possession will be effective at **1:00 PM on November 30, 2023**. If not, this Order of Possession will be effective at **1:00 PM on November 21, 2023**.

This Order **must** be served on the tenant as soon as possible and **must** be read in conjunction with the settlement agreement. Should the tenant fail to comply with it, it may be filed in the BC Supreme Court and enforced as an Order of that Court.

Pursuant to section 57(2) of the Act, the landlord must not take actual possession of the rental unit if it is still occupied by an overholding tenant, unless they have a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to section 57(3) of the Act, if the tenant overholds the rental unit, the landlord may claim compensation for any period that the tenant overholds the rental unit after the tenancy is ended. Under sections 7 and 67 of the Act, the landlord may also claim compensation for any other monetary losses suffered if the tenant overholds the rental unit, such as bailiff fees.

In support of the settlement described above, pursuant to section 63 of the Act, and with the agreement of the parties, I grant the landlord a Monetary Order in the amount of \$2,825.00. This Order **must** be served on the tenant as soon as possible and **must** be read in conjunction with the settlement agreement. Should the Tenant fail to comply with it, it may be filed in the BC Supreme Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 17, 2023

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Residential Tenancy Branch