



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: CNC, OLC, FFT  
                             TT: CNR, RR, RP, PSF, LAT, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution, made on November 2, 2023, and again on December 10, 2023 (the "Applications"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 24, 2023 (the "One Month Notice");
- an order that the landlord comply with the Act;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 2, 2023 (the "10 Day Notice");
- and order granting a rent reduction;
- an order for regular repairs;
- an order that the Landlord provide a service or facility;
- an order authorizing the Tenant to change the locks;
- an order granting the return of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the Landlords confirmed receipt of the Tenant's Proceeding Packages and evidence. The Tenant confirmed receipt of the Landlords' evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Landlords noted that some of the Tenant's evidence was not legible. Upon further review, it appeared as though the same quality of evidence was also submitted to the Tenancy Branch. The Tenant stated that they had a filter on, which made the evidence appear darker.

3.7 Evidence must be organized, clear and legible All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

I find that I am not able to consider the pieces of evidence submitted by the Tenant which are not legible.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the 10 Day Notice and the One Month Notice.

The Tenant's request for a rent reduction, an order for regular repairs, an order that the Landlord provide a service or facility, an order authorizing the Tenant to change the locks, and an order that the Landlord comply with the Act, are dismissed with leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
3. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenant is not successful in cancelling the 10 Day Notice or the One Month Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
5. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

### Background and Evidence

The parties testified that the tenancy began on January 1, 2023. The Tenant is required to pay rent in the amount of \$900.00 which is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlords testified the Tenant did not pay the full amount of rent when due for December 2023. The Landlords stated that they subsequently served the Tenant with a 10 Day Notice dated December 2, 2023 with an effective date of December 12, 2023 by placing it in the Tenant's mailbox on December 2, 2023. The Tenant confirmed having received the 10 Day Notice but could not recall on which date.

The Landlords testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$900.00 to the Landlords which was due on December 1, 2023. The Landlords stated that the Tenant has not paid any amount of outstanding rent to the Landlords since receiving the 10 Day Notice. Furthermore, the Landlords stated that the Tenant has also failed to pay rent for January 2024. The Landlords stated that the Tenant currently owes rent in the amount of \$1,800.00. As such, the Landlords are seeking an order of possession and a monetary order in relation to the unpaid rent.

The Tenant confirmed that they have not paid rent to the Landlord for December 2023 and January 2024. The Tenant stated that they felt entitled to withholding the rent as the Tenant had no heat in the rental unit for over two months and had to pay \$110.00 to re-light the pilot light on the furnace.

The Landlords responded and stated that the Tenant had the gas service disconnected in July 2023 without permission. The Landlords stated that they ordered the Tenant to have the gas reconnected, which required the pilot light to be lit. The Landlords stated that the Tenant was meant to pay the cost of doing this given they cut the gas off resulting in the extinguishment of the pilot light. The Tenant confirmed the same. The parties agreed that the heat in the rental unit has since been restored.

### Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not 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.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlords testified that they served the Tenant with the 10 Day Notice dated on December 2, 2023, by placing it in the Tenant's mailbox on December 2, 2023. The Tenant confirmed receipt but could not recall which date. I find the 10 Day Notice was deemed served to the Tenant three days later on December 5, 2023 pursuant to Section 88 and 90 of the Act.

After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on December 10, 2023. I find this is within the 5 day limitation period to dispute a notice to end tenancy.

I accept that the Tenant withheld rent from the Landlord in December 2023 and January 2024, totalling \$1,800.00. I find that the Tenant was not entitled to withhold rent from the Landlord because they felt the Landlord was not meeting their responsibilities with respect to maintaining the rental property. As the Tenant did not pay the outstanding

balance of rent indicated on the 10 Day Notice within 5 days after receiving the 10 Day Notice, I find that the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

According to Section 55 of the Act: (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession. During the hearing, the Landlords were agreeable to extending the tenancy until the end of January 2024.

Therefore, I find that the Landlords are entitled to an Order of Possession effective at 1:00PM on January 31, 2024, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As I found that the tenancy is ending based on the 10 Day Notice, I find that determining the validity of the One Month Notice is not necessary.

In light of the above, I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$1,800.00. I find it appropriate in the circumstances to order that the Landlords retain the \$450.00 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$1,350.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,800.00
<i>LESS</i> security deposit:	-( <i>\$450.00</i> )
<b>TOTAL:</b>	<b>\$1,350.00</b>

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective at 1:00PM on January 31, 2024 after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$1,350.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 22, 2024

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Residential Tenancy Branch