



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on May 6, 2024. The Tenant seeks:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (per section 46 of the *Act*).
- Compensation for monetary loss (per section 67 of the *Act*).
- Suspension of the Landlord's right to enter the Rental Unit.
- An order of compliance from the director (per section 62 of the *Act*).
- The recovery of their filing fee from the Landlord (per section 72 of the *Act*).

The Landlord filed their application on May 13, 2024. The Landlord seeks:

- An order of possession pursuant to their 10 Day Notice for Unpaid Rent and Utilities (section 55 of the *Act*).
- A Monetary Order for Unpaid Rent (section 67 of the *Act*).
- A Monetary Order for compensation for damage caused to the Rental Unit (per section 67 of the *Act*).
- Authorization to retain the Tenant's deposit (per section 72 of the *Act*).
- Recovery of their \$100.00 filing fee (per section 72 of the *Act*).

The Tenant attended the hearing alongside their advocate LF. MP attended the hearing for the Landlord.

### **Service of Records**

- *Tenant's Records to the Landlord*

The parties agreed that they did not have an agreement to serve their counterparty with records, for the purposes of the *Act* and the *Residential Tenancy Regulation*.

Notwithstanding the above, the Tenant testified that they served their application and documentary evidence to the Landlord by email on May 20, 2024. The Landlord

acknowledged receipt of the above email, but they testified that they could not open all its attachments.

The Landlord acknowledged that they then received a registered mail package from the Tenant containing approximately 20 to 25 pages of records.

I canvassed the documents the Tenant submitted to the Residential Tenancy Branch in relation to unpaid rent and the eviction notice (which, as I will explain below, are the sole issues that were covered during this hearing), and the Landlord acknowledged that they are in receipt of those records.

Based on the above, and pursuant to section 71(2)(c) of the *Act*, I find that the Tenant sufficiently served their application and documentary evidence in relation to the eviction notice and unpaid rent, to the Landlord, for the purposes of the *Act*.

- *Landlord's Records to the Tenant*

The Landlord testified that their agent sent two registered packages to the Tenant at the Rental Unit. The Landlord submitted a Canada Post Customer Receipt for their first registered package. I have copied both tracking numbers on the cover page of my decision.

The Landlord also referred me to a signed and dated statement from their agent regarding service of their application and documentary evidence to the Tenant on May 16, 2024. In this statement, an individual by the name of BR states that they served the Landlord's Notice of Dispute Resolution Proceeding Package and the Landlord's documentary evidence to the Tenant, by leaving the records in the Tenant's mailbox, on May 16, 2024, at 4:02 PM. The Tenant is identified by name and the Rental Unit's address is also identified. The statement is signed by BR.

The Tenant testified that they received the Landlord's documentary evidence but not the Proceeding Package. The Tenant submitted a copy of the records they received from the Landlord. I have reviewed the 21 pages that the Tenant submitted, and I find these 21 pages relate to the sole issue that I adjudicated in this hearing (unpaid rent and an end to this tenancy). More specifically, I find the Tenant received copies of the Landlord's bank statements. Consequently, I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the *Act*.

The Tenant testified that they received the Proceeding Package from Service BC on May 22, 2024. Consequently, I do not find it necessary to determine whether the Landlord successfully served their Proceeding Package to the Tenant by registered mail

or by placing the same in the Tenant's mailbox. I find, pursuant to section 71(2)(c) of the *Act*, that the Tenant, for the purposes of the *Act*, was sufficiently served with the Landlord's proceeding package.

## **Preliminary Matters**

### *o Parties' Names*

At the start of the hearing, I canvassed the parties' names, because neither party's name, as stated in the Tenant's application, matched the parties' tenancy agreement.

The Landlord provided their correct last name, which matched the spelling of their name as stated in the parties' tenancy agreement. The Tenant testified that they go by two different last names. It is unclear whether the Landlord has reviewed the Tenant's Government issued photo identification. I have no way of determining what the Tenant's actual legal last name is.

Pursuant to section 64(3)(c) I amended the Tenant's application to correct the Landlord's last name and to include the Tenant's two last names, as provided to me during the hearing.

The style of cause on the cover page of my decision reflects my amendment.

### *o Related Claims and Issues Covered*

Rule 2.3 of the Residential Tenancy Branch *Rules of Procedure* states that claims made in an application must be related to each other.

Rule 6.2 authorizes me to sever issues that are unrelated to the primary issue before me and dismiss those claims with or without leave to reapply.

In this case the primary issue before me is whether this tenancy must come to an end based on the Tenant's failure to pay rent. The Landlord has issued an eviction notice to the Tenant, pursuant to which they are seeking an end to this tenancy and the Tenant is disputing the validity of the eviction notice.

At the start of the hearing, I informed the parties that the balance of the parties' claims (except for the parties' claims for filing fees) are unrelated to this primary issue. Consequently, the parties are in breach of Rule 2.3 of the *Rules of Procedure*. Pursuant to Rule 6.2 of the *Rules of Procedure*, I dismissed the following claims with leave to reapply:

Tenant's Application:

- Compensation for monetary loss (per section 67 of the *Act*).
- Suspension of the Landlord's right to enter the Rental Unit.
- An order of compliance from the director (per section 62 of the *Act*).

Landlord's Application:

- A Monetary Order for compensation for damage caused to the Rental Unit (per section 67 of the *Act*).

This hearing then went ahead solely regarding the Landlord's eviction notice and whether the eviction notice was given to the Tenant for a valid reason.

## Background Facts and Evidence

The parties agreed that:

- This tenancy commenced on September 1, 2023, pursuant to a written tenancy agreement, signed and dated by the parties on September 5, 2023.
- The monthly rent is currently \$1,395.00, due on the first day of every month.
- The Landlord is holding a \$647.50 security deposit in trust for the Tenant.

In their application, the Tenant has written the following confusing statement:

"The rent was pd my ol 2024 in full. The rent was paid in full May 01 2024. Credit of 265.00 towards June 01 2024".

The Tenant testified that on May 5, 2024, they received the Landlord's 10 Day Notice for Unpaid Rent and Utilities, signed by the Landlord on May 2, 2024 (the **Notice**).

The parties submitted copies of the Notice. The Notice is signed and dated, it includes the Rental Unit's address, a correct effective date, the Landlord's name, the Tenant's name, and the ground for ending this tenancy: unpaid rent in the month of May 2024 in the amount of \$950.00.

The Landlord testified that the actual amount of unpaid rent in the month of May 2024 was \$815.00, and the difference between \$950.00 and \$815.00 is accrued late fees to date. During the hearing, the Landlord testified that they are only seeking the actual amount of unpaid rent, which is \$815.00.

The Landlord testified that the Tenant paid their June 2024 rent.

The Tenant testified that they paid their May 2024 rent in full and testified that on May 1, 2024, they sent the Landlord \$1,400.00 by e-transfer. I asked for clarification, because the parties agreed that the monthly rent is \$1,395.00, not \$1,400.00, and the Tenant testified that they paid extra in that month.

The Tenant testified that on May 1, 2024, they sent two e-transfers to the Landlord. They testified that the first was in the amount of \$400.00 and the second was in the amount of \$1,000.00.

The Tenant referred me to e-transfer receipts they submitted as evidence. I informed the Tenant that their receipt shows that they sent the Landlord a \$450.00 e-transfer, not \$400.00. The Tenant then testified that they sent \$450.00, not \$400.00.

The Tenant also submitted a screenshot copy of an email deposit notification from Scotiabank, which states that a payment of \$1,000.00 was deposited. I can see the date May 1, 2024. The reference number for this transaction is CAhkmyWX.

The Landlord testified that the Tenant is being dishonest, because on April 13, 2024, the Tenant sent the Landlord \$1,000.00 and the Tenant is attempting to pass-off the payment confirmation for that transaction as the payment confirmation for a transaction that purportedly took place on May 1, 2024.

Confusingly, the Tenant themselves submitted a copy of an e-transfer payment confirmation, dated April 13, 2024, in the amount of \$1,000.00, with the transaction reference number CAhkmyWX. This reference number is identical to the purported payment confirmation of May 1, 2024.

I asked the Tenant for an explanation, and they testified that they cannot explain why the two transactions have the same reference number.

The Tenant did not explain why they would send the Landlord \$1,450.00 on May 1, 2024, when their monthly rent is \$1,395.00.

The Landlord submitted copies of bank statements showing incoming Interact E-transfer payments from the Tenant. They testified that their NB bank statement, dated May 16, 2024, was sent to them directly by mail from their bank. I can see a \$1,000.00 deposit into the Landlord's NB bank account on April 13, 2024, from an issuer with the Tenant's first name. On the bank statement I can see the following sentence: "Period: September to present". The statement is dated May 16, 2024. Therefore, the last deposit into this bank account occurred on April 13, 2024. Prior to that date, I can see five previous payments from the Tenant.

The Landlord testified that in addition to the above bank account, they have an RBC bank account that they deposit rent payments to. The Landlord submitted a bank statement showing all deposits from the Tenant from September 5, 2023, to May 1, 2024. On the top of the statement, I can see that the statement is current to May 8, 2024. The only deposit on May 1, 2024, is in the amount of \$450.00.

## Analysis

The Tenant acknowledged receipt of the Landlord's Notice on May 5, 2024.

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 Branch.

The Tenant disputed the Notice on May 6, 2024. The Landlord therefore has the burden of proof in this case to establish that the Notice was given for a valid reason.

The standard of proof in this tribunal is on a balance of probabilities.

I find credibility in this case is an issue because the Landlord is in essence accusing the Tenant of committing fraud. The Landlord is alleging that the Tenant is submitting e-transfer receipts from prior payments to deceive the Landlord and this tribunal.

At paragraph five of *R v Parent*, 2000 BCPC 0011, the Honourable Judge A.E. Rounthwaite set out some factors that courts have traditionally considered in assessing a parties' credibility:

1. the witness' ability to observe the events, record them in memory, recall and describe them accurately,
2. the external consistency of the evidence. Is the testimony consistent with other, independent evidence, which is accepted?
3. its internal consistency. Does the witness' evidence change during direct examination and cross-examination?
4. the existence of prior inconsistent statements or previous occasions on which the witness has been untruthful.
5. the "sense" of the evidence. When weighed with common sense, does it seem impossible or unlikely? Or does it "make sense"?
6. motives to lie or mislead the court: bias, prejudice, or advantage. To consider the obvious possible motive of every accused person to avoid conviction would place an accused at an unfair disadvantage. As a result, I do not consider that possible motive when assessing an accused's testimony.
7. the attitude and demeanour of the witness. Are they evasive or forthcoming, belligerent, co-operative, defensive or neutral? In assessing demeanour a judge should consider all possible explanations for the witness' attitude, and be sensitive to individual and cultural

factors, which may affect demeanour. Because of the danger of misinterpreting demeanour, I would not rely on this factor alone.

The Tenant's testimony in this case was inconsistent, both internally and externally. Initially they testified that they paid \$1,400.00 to the Landlord. When questioned, they testified that they paid \$1,450.00 to the Landlord, without providing further clarity. Their testimony is also externally inconsistent, because there is no record of a \$1,000.00 deposit to the Landlord's two accounts on May 1, 2024. The only evidence of a \$1,000.00 payment is a deposit confirmation with a reference number that is identical to a payment that was made in the month of April 2024.

I also found the Tenant's testimony implausible. No explanation was given for why the Tenant would pay \$1,450.00 in May 2024 when their rent is \$1,395.00 per month. It is not clear to me if the Tenant even realized the need to provide such an explanation considering they began their testimony with the claim that they paid \$1,400.00 in the month of May 2024.

Based on the evidence provided, I find the Tenant never paid their rent in full for the month of May 2024 and, therefore, the Notice was given for a valid reason. I find the Tenant contravened section 26 of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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.

The Tenant's position at the hearing was that they paid their rent, not that they had a valid reason not to do so. Therefore, I find validity of the reason for non-payment is a non-issue in this case.

Eviction notices must abide by the form and content requirements of section 52 of the *Act*. I have reviewed the Notice and I find the Notice is compliant.

For the above reasons, I find that the Notice is valid. I dismiss the Tenant's application to cancel the Notice, without leave to reapply. I grant the Landlord's application for an Order of Possession, based on the Notice and section 55 of the *Act*. Section 55(1) of the *Act* states that if a tenant applies to dispute a notice to end tenancy, the director must grant the landlord an order of possession if during the dispute resolution proceedings, the Tenant's application is dismissed, or the Landlord's notice is upheld.

Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

The Landlord is seeking an immediate order of possession. However, I note that the Tenant has paid their June 2024 rent in full. The Tenant requested that they remain in the Rental Unit until June 20, 2024, because they have purchased property and that is when they are taking possession of their property. I find this to be a reasonable request in the circumstances.

Pursuant to section 55 of the *Act*, I order this tenancy to end **at 1:00 PM on June 20, 2024**, after service of the attached Order of Possession to the Tenant. I caution the Tenant that any costs associated with enforcement of the Order, including the costs associated with hiring bailiff(s), can be passed on to the Tenant, even after this tenancy ends.

**I grant the Landlord's application to recover \$815.00 in outstanding rent**, pursuant to section 67 of the *Act*. The Landlord submitted a detailed ledger that includes all incoming payments from the Tenant. The difference between what the Tenant paid in the month of May 2024 (\$450.00) and the Tenant's monthly rent (\$1,395.00) is \$945.00. However, per the Landlord's ledger, the Tenant paid additional sums in certain months, which is why the Landlord is seeking the reduced amount of \$815.00.

As the Landlord was successful, I award the Landlord their \$100.00 filing fee, pursuant to section 72 of the *Act*.

Further, pursuant to section 72 of the *Act*, **I order the Landlord** to retain the Tenant's \$647.50 security deposit, in full, plus interest, in the amount of \$11.72, calculated from September 1, 2024, to June 5, 2024.

The above figures and orders are summarized under the conclusion section of my decision.

## **Conclusion**

The Tenant's application to dispute the Notice and to recover their filing fee is dismissed without leave to reapply. The balance of the Tenant's application is dismissed with leave to reapply.

I grant the Landlord's application for an order of possession pursuant to the Notice, their application to retain the Tenant's security deposit, and their application to recover the filing fee from the Tenant.

Pursuant to section 55 of the *Act*, **I order this tenancy to end at 1:00 PM on June 20, 2024**, after service of the attached Order of Possession to the Tenant. Should the Tenant or anyone on the premises fail to comply with this Order, the attached Order of Possession may be filed and enforced as an Order of the Supreme Court of British Columbia. I warn the Tenant that any costs of enforcement may be recoverable from the Tenant, including bailiff fees.



I grant the Landlord a Monetary Order in the amount of **\$255.78**, as follows:

<b>Monetary Issue</b>	<b>Granted Amount</b>
A monetary order for unpaid rent, per s. 67 of the <i>Act</i> .	\$815.00
Plus: filing fee, per s. 72 of the <i>Act</i> .	\$100.00
Less: security deposit and accrued interest, per s. 72 of the <i>Act</i> .	-\$659.22
<b>Total Amount</b>	<b>\$255.78</b>

The Monetary Order must be served to the Tenant as soon as possible. Should the Tenant fail to comply, the Monetary 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: June 05, 2024

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Residential Tenancy Branch