



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, OPC, MNRL, MNDCL, FFL / CNR, CNC, LRE, FFT

### Introduction

A hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord seeks:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act;
- An Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act;
- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- Monetary Order for loss under the Act, *Residential Tenancy Regulation*, or tenancy agreement, under section 67 of the Act; and
- To recover cost of the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant seeks:

- An order cancelling the 10 Day Notice under section 46(4)(b) of the Act;
- An order cancelling the One Month Notice under section 47(4) of the Act;
- An order to restrict or suspend the Landlord's right of entry to the rental unit under section 70 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

The hearing took place on June 27, 2024 and was adjourned to written submissions to allow for the service of one page of the Tenant's evidence, namely their banking records, and the Landlord to provide a response. This Decision should be read in

conjunction with the interim decisions dated June 27, 2024 and July 23, 2024. Service of the Notice of Dispute Resolution Proceeding and the evidence of both parties was addressed in the interim decisions.

### Preliminary Issue – Severing

Both parties applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an application must be related to each other. Rule 6.2 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by both parties in their Applications, I determined that the primary issues are those related to the 10 Day Notice and the One Month Notice (collectively, the Notices), as these related to a potential end to this tenancy, and the other issues was not sufficiently related.

I therefore exercised my discretion to dismiss with leave to re-apply, all claims other than the ones related to the Notices. Leave to reapply is not an extension of any applicable time limit.

### Issues to be Decided

- Is the Tenant entitled to an order cancelling the Notices?
- If not, is the Landlord entitled to an Order of Possession on the basis of either of the Notices?
- Is the Landlord entitled to a Monetary Order for unpaid rent based on the 10 Day Notice?
- Are either party entitled to recover the filing fee for their respective Applications from the other party?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on April 1, 2024 for a fixed term ending March 30, 2025 and continuing on a month-to-month basis after that.
- Rent is \$6,800.00 per month, due on the first day of the month.
- The tenancy agreement required the Tenant to pay a security deposit of \$3,400.00 to the Landlord.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenant still occupies the rental unit, a single family home.

Copies of the Notices were entered into evidence. The 10 Day Notice is on the approved form and is signed and dated May 16, 2024 and provides an effective date of May 31, 2024. The 10 Day Notice indicates the Tenant failed to pay rent of \$13,600.00 due on May 1, 2024.

The One Month Notice is also on the approved form, is signed and dated May 16, 2024 and provides an effective date of June 30, 2024. The reason for ending the tenancy outlined on the One Month Notice is the security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord's Agent testified as follows. The cheque provided by the Tenant for rent due April 1, 2024 and the security deposit bounced, as the Tenant had issued a stop payment on the cheque. The 10 Day Notice was issued on May 16, 2024 accordingly. The One Month Notice was issued, also on May 16, 2024, as the security deposit had not been paid by the Tenant. The Notices were served to the Tenant via registered mail on May 16, 2024.

A copy of a returned cheque dated March 28, 2024 numbered cheque 1011 (Cheque 1011) for \$10,200.00 for the security deposit and rent due April 1, 2024 was provided into evidence by the Landlord. The reason for the payment being returned is seen as "stopped/recalled".

The Landlord's Agent stated the Landlord tried to deposit the cheque for the rent due on May 1, 2024 and they were informed by a member of staff at the bank that there was "no money in that account". It is unknown if the Landlord attempted to cash the cheque dated June 1, 2024. The Landlord provided copies of cheques, each for \$6,800.00, dated May 1, 2024 to March 1, 2025, into evidence, though no records of any other cheques being returned were provided, besides Cheque 1011.

The Tenant testified as follows. Cheque 1011 cleared on April 2, 2024 and was then presented another two times, with returned item credit on the latter two times on April 2, 2024 and April 6, 2024 respectively. The Tenant indicated the images of returned cheques from the Landlord do not prove that Cheque 1011 was not deposited as there were multiple presentations. The Tenant argued the bank statement dated June 18, 2024 (the Bank Statement) spoke for itself in this regard.

The Landlord was provided the opportunity to review the Bank Statement and provide written submissions in response. The Landlord's Agent argued the statement showed the multiple presentations cancelling out, and that the statement was falsified.

### Analysis

The Notices were issued to the Tenant on May 16, 2024 by registered mail. The Tenant confirmed receipt of the Notices on May 21, 2024 in their Application, which was filed on May 25, 2024. Given this, I find the Tenant applied to dispute the 10 Day Notice in accordance with the timeframe established in section 46(4) of the Act, and that the One Month Notice was disputed within the timeframe set out in section 47(4) of the Act.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I find the reasons behind the Notices being issued overlap and relates to alleged non-payment of rent and the security deposit by the Tenant. The Landlord takes the position that the rent due April 1, 2024 and May 1, 2024, and the security deposit were unpaid owing to the Tenant's cheques being cancelled. The Tenant takes a contrary position, arguing that Cheque 1011, for the rent due April 1, 2024 and the security deposit cleared, and the Landlord is in possession of the cheque for rent due May 1, 2024 also.

Based on the evidence before me, I find cheque 1011 cleared on April 2, 2024 and was presented a further two times when it was predictably stopped. I find the Bank Statement clearly shows this, and the notion that Cheque 1011 cleared and was then re-presented twice is corroborated by email communication from the Tenant's bank provided as evidence.

I disagree with the Landlord's Agent's interpretation of the Bank Statement. I find the multiple presentations do not cancel one another out. There are clearly three debit

transactions, and two credits when the payment is returned. I find nothing to substantiate the allegation the document is fraudulent.

Based on the above I find the Tenant satisfied their obligation to pay the rent due April 1, 2024 and the security deposit. Given this, I find the Landlord has failed to establish they had insufficient cause to issue the One Month Notice and obtain an end to the tenancy under section 47(1)(a) of the Act.

It was undisputed the Tenant had provided the Landlord with post-dated cheques for rent at the start of the tenancy, including the rent due May 1, 2024. Though the Landlord's Agent testified the cheque did not deposit, I found this testimony to be vague, unconvincing and to be uncorroborated by evidence.

Given the above, I find the Landlord has failed to prove on a balance of probabilities the Tenant did not pay rent when it was due on May 1, 2024 as is required under section 26 of the Act. I find the Tenant fulfilled their obligation in this respect by providing a cheque to the Landlord. The Landlord has failed to prove this cheque would not deposit, or was otherwise invalid.

Based on the above, I grant the Tenant's request to cancel the Notices and I dismiss without leave to reapply the Landlord's request for an Order of Possession based on the Notices, and a Monetary Order for unpaid rent based on the 10 Day Notice.

I order the 10 Day Notice to End Tenancy for Unpaid Rent dated May 16, 2024, and the One Month Notice to End Tenancy for Cause, also dated May 16, 2024 cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I issue a Monetary Order to the Tenant accordingly. In order to satisfy the Monetary Order, the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee per section 72(2)(a) of the Act.

The Landlord must bear the cost of the filing fee for their Application. I dismiss without leave to reapply the Landlord's request under section 72 of the Act.

### Conclusion

The Notices are cancelled. The tenancy continues.

The Tenant is issued a Monetary Order for \$100.00. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenant's obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: August 02, 2024

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Residential Tenancy Branch