



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

### **Introduction**

The Tenant sought orders cancelling various notices to the tenancy under the *Residential Tenancy Act* (the “Act”).

In addition, the Tenant sought an order for landlord compliance and an order restricting the Landlords’ right of entry. Given that two notices to end tenancy will be upheld, I dismiss the application for orders for landlord compliance and the order restricting the Landlords’ right of entry; these are dismissed without leave.

### **Issue**

Is the Tenant entitled to orders cancelling notices to end tenancy?

### **Background and Evidence**

In an application under the Act where a tenant disputes a notice to end tenancy, the respondent landlord must prove the reason for issuing the notice to end tenancy on a balance of probabilities. Stated another way, the evidence must show that the events in support of the reason for issuing the notice to end tenancy were more likely than not to have occurred. While I have reviewed and considered all the oral and documentary evidence, I will only refer to that which is relevant to this decision.

The Landlords issued a *One Month Notice to End Tenancy for Cause* on June 9, 2024. However, the primary reason for that notice to end tenancy being has largely resolved itself. As such, I did not hear any testimony or submissions about that notice, the Landlords indicated their preference to focus on the remaining notices, and thus I make no decision regarding the merits of the *One Month Notice to End Tenancy for Cause*.

The tenancy itself began on April 1, 2024. The monthly rent is \$2,700.00 and this is due on the first day of the month. The Tenant paid a \$1,000.00 security deposit. There is a copy of a *Residential Tenancy Agreement* on this tenancy.

On July 2, 2024, the Landlords served the Tenant with a *10 Day Notice to End Tenancy for Unpaid Rent* (the “July 2 NTE”). The July 2 NTE, a copy of which was in evidence, was served by being attached to the door of the rental unit. The July 2 NTE indicated that rent in the amount of \$2,700.00 was due and owing as of July 1, 2024. The Landlords testified that the Tenant has not paid anything on these arrears.

On August 4, 2024, the Landlords served the Tenant with a second *10 Day Notice to End Tenancy for Unpaid Rent* (the “August 4 NTE”). The August 4 NTE, a copy of which was also in evidence, was also served by being attached to the door of the rental unit. The Tenant has not paid any rent for August 2024. In total, the Tenant owes arrears of \$5,450.00.

The Tenant testified that the Landlords’ calculations are off, and that he made a payment of \$100.00 in May; the Tenant did not provide any documentary evidence to support this assertion. In any event, the Tenant testified that he was assaulted about halfway through June and this has limited his ability to earn an income. His vehicle was also stolen, making earning a living difficult. He has contacted victim assistance though it is unclear what they are doing in this regard.

That having been, the Tenant has recently started working and would like to set up rent repayment plan. I briefly canvassed the idea of a payment plan with the Landlords, who explained that they do not wish to consider this option and would rather have the tenancy ended.

## **Analysis**

Subsection 26(1) 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 did not refer me to any section of the Act giving him the legal right not to pay the rent. Nor did the Tenant provide any evidence from which I might base a possible legal right for him to not pay the rent.

Certainly, I very much acknowledge and empathize with the Tenant’s recent difficulties, including being assaulted and having his vehicle stolen. However, as awful as these circumstances may be, the Tenant is nonetheless required to pay the rent.

Subsection 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.

In this dispute, the Tenant did not pay rent due on either July 1 or August 1, and the Landlords subsequently issued the July 2 NTE and the August 4 NTE. Having reviewed both notices to end tenancy, it is my finding that they both comply with the form and content requirements as set out in section 52 of the Act

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving a breach of subsection 26(1) of the Act on which the two notices were issued. Thus, the Tenant's applications for an order cancelling the notices are dismissed without leave to reapply and the Landlords are, pursuant to subsection 55(1) of the Act, granted an order of possession.

An order of possession is issued with this decision to the Landlords. The Landlords must serve a copy of the order of possession upon the Tenant, who has seven (7) days to vacate the rental unit. The order of possession may be filed and enforced in the Supreme Court of British Columbia.

Further, pursuant to subsection 55(1.1) of the Act, the Landlords are granted a monetary order for the unpaid rent in the amount of \$5,450.00. Pursuant to subsection 38(4)(b) of the Act the Landlords are authorized to retain the Tenant's \$1,000.00 security deposit as partial payment of the arrears.

A monetary order in the amount of \$4,450.00 is issued with this decision to the Landlords. The Landlords must also serve a copy of the monetary order upon the Tenant. The monetary order may, if necessary, be filed and enforced in the Provincial Court of British Columbia (Small Claims).

## **Conclusion**

The applications are dismissed without leave to reapply.

The Landlords are granted an order of possession of the rental unit.

The Landlords may retain the \$1,000.00 security deposit and are granted a monetary order in the amount of \$4,450.00.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 12, 2024

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Residential Tenancy Branch