



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

The Tenant filed an Application for Dispute Resolution (“Application A”) on November 3, 2024, seeking:

- the Landlord’s compliance with the Residential Tenancy Act (the “Act”) and/or the tenancy agreement
- recovery of the Application A filing fee.

The Tenant filed a second Application (“Application B”) on November 4, 2024, seeking:

- the Landlord’s compliance with the *Act*/tenancy agreement
- suspended/set conditions on the Landlord’s right to enter the rental unit
- authorization to change the locks to the rental unit
- recovery of the Application B filing fee.

The Tenant filed a third Application (“Application C”) on November 5, 2024, seeking:

- the Landlord’s compliance with the *Act*/tenancy agreement
- recovery of the Application C filing fee.

The Tenant filed a fourth Application (“Application D”) on November 12, 2024, seeking to challenge the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) the Landlord served to them. They also seek recovery of that Application filing fee.

The Landlord filed an Application (“Application E”) on November 14, 2024, seeking:

- an order of possession in line with the 10-Day Notice
- recovery of rent amounts owed by the Tenant
- recovery of the Application filing fee.

The Tenant filed an Application (“Application F”) on November 21, 2024, seeking to challenge the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) the Landlord served to them. They also seek recovery of the Application F filing fee.

### **Preliminary Matter – adjournment**

The Tenant provided a written account of their need for an adjournment in this matter, dated November 3. It is not known if they disclosed this letter to the Landlord in the interim period between December 2 and December 9.

The Tenant cited their reasons for an adjournment, including the volume/complexity of evidence, their ability to manage the property via an agent, and their own status and matters in a different jurisdiction.

I informed the parties in the December 9 hearing there would be no further adjournment. The Landlord did not agree to a further adjournment, and I find an adjournment would prejudice the Landlord insofar as their rights as a landlord and a property owner would continue to be impacted by no resolution in this matter.

I dismiss the Tenant’s request for a further adjournment in this matter; the hearing proceeded as scheduled on December 9.

### **Preliminary Matter – repeat applications**

The Tenant made repeat applications, Application B and Application C, on November 4 and November 5, 2024. I incorporate, where necessary and relevant, the issues the Tenant provided on these subsequent applications, only relevant to the issue of the tenancy agreement in place between the parties. This is based on my decision on the matter of the tenancy ending, as set out below.

I find the Tenant had the means and the ability to amend Application A to add other subsequent issues. They did not do so, and this added considerable complexity to the hearing process and issues for consideration. For this reason, I grant no recovery of either of the Tenant’s Application B and Application C filing fee.

### **Service of further evidence to the Landlord**

In the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceedings from the Tenant. This is for Applications A through D, and F.

I concluded the matter of service of evidence between the parties in the Interim Decision dated December 3, 2024. In the interim period, the Tenant served more evidence to the Landlord, which the Landlord acknowledged in the reconvened hearing.

### **Issues to be Decided**

- A. Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?
- B. Is the Landlord entitled to compensation for rent amounts owing?
- C. Is the One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?
- D. Is the Landlord obligated to comply with the *Act*/tenancy agreement?
- E. Is the Landlord subject to set conditions for their entry in the rental unit? Is the Tenant authorized to change the locks at the rental unit?
- F. Is the Tenant eligible for recovery of the Application filing fee?
- G. Is the Landlord eligible recovery of the Application filing fee?

### **Background and Evidence**

The Landlord provided copies of the tenancy agreement that was in place between the parties. The tenancy started on April 1, 2017. The set rent amount was \$2,100 per

month, payable on the first day of each month. The Tenant paid a security deposit of \$1,050 by cheque dated April 11, 2017.

The “Landlord” is defined in the agreement as the property owner and their agent. Emergency contact information, with two phone numbers and an email address, is provided on page 3.

The Landlord pointed to clause 14 of the agreement, where “The Tenant agrees not to assign or sublet the premises without the Landlord’s written permission and consent.”

There was a subsequent agreement signed between the parties on March 28, 2018. The rent amount at that time continued at \$2,100 per month. The property owner and their agent are again identified as the “Landlord”.

A third agreement was in place between the parties, starting January 1, 2020. The Landlord is listed only as the property owner. The rent amount was set at \$2,152.

The Tenant submitted the tenancy agreement was void from its inception due to the lack of an address for service on the document. The Tenant also questioned the agent’s ability to act on the Landlord’s behalf. The Tenant also pointed to inconsistencies on the land title document, questioning who their landlord was, and submitted this was the Landlord’s fraud. The Tenant provided copies of what was purportedly their correspondence to the Landlord asking for address of service information.

The Landlord provided copies of the following:

- a signed notice of rent increase effective July 1, 2019, increasing the rent to \$2,152.50
- a signed notice of rent increase effective August 1, 2023, increasing the rent to \$2,228.70
- a notice of rent increase effective September 1, 2024, increasing the rent to \$2,306.70 – the Landlord noted they served this to the Tenant via email on June 11, and provided a signed copy in the Tenant’s mailbox on that same date

*A. Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The Landlord served the 10-Day Notice to the Tenant on November 4, 2024. The Tenant surmised this was in response to the Tenant's Applications to the Residential Tenancy Branch.

For this present Application, the copy of the 10-Day Notice that the Landlord signed on November 4, 2024 set the end-of-tenancy date for November 14, 2024. The Landlord noted on page 2 the rent amount of \$2,384.70, owing as of November 1, 2024.

In the hearing, the Tenant described the Landlord serving this 10-Day Notice in retaliation for the Tenant bringing their applications forward to the Residential Tenancy Branch. Primarily this concerned the Landlord's non-provision of an address for service.

In the hearing, the Landlord clarified the rent amounts owed:

- the October 2024 rent was short by \$78, owing to the Tenant's overpayment of that amount in September 2024 – the Landlord acknowledged the rent increase was not actually effective until October 1, 2024
- the Landlord received no rent for November 2024
- the Landlord received no rent for December 2024.

The Tenant in the hearing stated they did not pay rent for November or December 2024. They provided a written account of their payment history, and described this in the hearing. In the Tenant's submission rent to the Landlord was never an issue for the entirety of the tenancy. The Landlord served this end-of-tenancy notice in retaliation for the Tenant filing an application for dispute at the Residential Tenancy Branch.

*B. Is the Landlord entitled to compensation for rent amounts owing?*

The Landlord prepared a worksheet showing unpaid rent amounts. This specifies the details of the November 1 amount of \$2,384.70, being the full amount for November rent, and the October shortfall of \$78.

Adding the amount of December 2024 rent not paid, the amount claimed by the Landlord at this stage was \$4,691.70.

*C. Is the One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The Tenant provided a copy of the One-Month Notice the Landlord served to them, signed by the Landlord on November 5, 2024.

On page 2 the Landlord provided the reasons:

- Tenant is repeatedly late paying rent
- Tenant has assigned or sublet the rental unit . . . without landlord's written consent.

In a description on page 2, the Landlord provided the following:

On November 4, 2024, the landlord arrived to serve a legal 10-Day Notice for unpaid rent for November 2024. Upon arrival the landlord was surprised to find strangers occupying the apartment that was rented to our tenant, [Tenant name]. According to the family currently residing in the unit, they have been subleasing from our Tenant [Tenant name] for over a year and have been paying rent directly to your Tenant [Tenant name].

The Tenant [Tenant name] did not notify the landlord nor did [the Tenant] seek approval from the landlord for this arrangement of subletting to other party. As per the executed Tenancy Agreement between the Tenant [Tenant name] and the landlord, subletting is not allowed under any circumstances.

Additionally, the Strata Management of the building of the rental unit are unaware that the unit has been rented to the third party by our Tenant [Tenant name]. Currently the suite is illegally occupied a year.

The Landlord provided a written witness statement from the person who observed the Landlord serve the 10-Day Notice at the rental unit on that date. The occupants in the rental unit provided their name to the Landlord, and provided they had been renting the rental unit from the Tenant for over a year. They paid \$2,800 per month on the first of each month. They told the Landlord that the Tenant left the country toward the start of their sublet, and they deal with an agent. The resident in the rental unit stated they would forward the 10-Day Notice to this agent.

The Landlord in the hearing described their request sent to the Tenant on November 3, asking to meet to discuss the recent matters of unpaid rent. They had no response; therefore, they served the 10-Day Notice to the occupants at the rental unit on November 4. This was their discovery of other occupants in the rental unit.

The Landlord subsequently served their notice to the Tenant about seeking an order of possession and recovery of rent amounts owed. The occupant refused to open the

door and called the RCMP, leaving the Landlord to serve the hearing notice on the door of the rental unit. The Tenant in the hearing took strong objection to the Landlord's arrival at the rental unit for this purpose, and described the matter as one of safety and security, as well as a health concern of the occupants.

The Tenant in the hearing provided that they sublet to the Tenant since March 2023. They purchased a one-way ticket to a different jurisdiction, and have been residing in that area since that time. In confirming, upon direct question, that they did not seek or have the Landlord's approval to sublet, they responded to say that the Landlord had no presence at the rental unit, or in any other matters about the tenancy, in virtually six years since the tenancy started at that point.

In the hearing, the Tenant confirmed that the residents notified the Tenant about their move-out from the rental unit on January 1, 2025.

*D. Is the Landlord obligated to comply with the Act/tenancy agreement?*

The Tenant cited various concerns about the Landlord's provision of an address for service, the ownership of the rental unit, and the Landlord's agents apparently having no delegated authority to act as such over the course of the tenancy.

*E. Is the Landlord subject to suspended/set conditions on their right to enter the rental unit? Is the Tenant authorized to change the locks at the rental unit?*

The Tenant specified the immediate concern that the Landlord posed a risk to safety and security to those people who resided in the rental unit.

The Landlord in the hearing confirmed they did not enter the rental unit when serving documents at the rental unit, or when conversing with the residents about matters concerning the tenancy.

*F. Is the Tenant eligible for recovery of the Application filing fee?*

The Tenant paid the \$100 filing fee for Application A on November 3, 2024.

The Tenant paid the \$100 filing fee for Application B on November 4, 2024.

The Tenant paid the \$100 filing fee for Application C on November 5, 2024.

The Tenant paid the \$100 filing fee for Application D on November 12, 2024.

The Tenant paid the \$100 filing fee for Application F on November 15, 2024.

*G. Is the Landlord eligible for recovery of the Application filing fee?*

The Landlord paid the \$100 filing fee for Application E on November 14, 2024.

**Analysis**

I have reviewed the tenancy agreements as they existed between the parties over the course of this tenancy that started in 2017. The Landlord was defined as the property owner and their family member. The Tenant signed the original tenancy agreement with this family member who acted as the Landlord's agent at all times during this tenancy. It is implausible, and beyond credible, that the Tenant did not know who their Landlord was at any time during this tenancy. I dismiss the Tenant's arguments about the Landlord's identity not known to them in this matter.

I find the agreement is not nullified by the lack of a postal address for service therein. The Tenant did not present that this proved problematic to them over the course of the tenancy. I find what the Tenant presented as their requests to the Landlord for this information in the past are inaccurate, and do not build the Tenant's case in terms of evidence to show they inquired to the Landlord about this in the past. The Landlord approved the Tenant's rent reduction/supplement for a short time in the past, and lack of a service address proved no barrier to completion of that process.

I find the tenancy agreement in place between the parties was legal and valid at all times during this tenancy.

*A. Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The Act s. 46 sets out 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 a tenant receives the notice.

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

With s. 46(5) if a tenant who received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), that tenant is conclusively presumed to have accepted that the tenancy ends on the effective



date of the notice and must vacate the rental unit to which the notice relates by that date.

Based on the submissions of the Landlord, and confirmation from the Tenant, I find they provided the 10-Day Notice by a proper means of service to the Tenant. The Tenant then failed to pay the rent owing within 5 days as they admitted in the hearing. The Tenant actually applied for dispute resolution past the 5-day timeline; I find they did not have a plausible reason for applying late.

This is a matter of conclusive presumption; however, additionally and in the alternative, I find the Tenant admitted they did not pay rent for November or December 2024.

The *Act* s. 26(1) sets out:

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.

A rent reduction of any kind may only be ordered by an arbitrator, as set out in the *Act* s. 65. In particular, s. 65(1)(c) authorizes an arbitrator's order for repayment of any money paid by a tenant to a landlord, or deducted from rent.

I find the Tenant violated s. 26 of the *Act*. The Tenant admitted this in the hearing. I find as fact that the Tenant was not paying rent amounts as of November and December 2024. The Tenant had no authorization to withhold rent of any amount. By s. 26, the Tenant did *not* have a right under the *Act* to deduct any part of the monthly rent.

I find that the Tenant did not pay rent when it was due, thereby violating s. 26 of the *Act*. The Landlord correctly issued a 10-Day Notice for this reason. I find the Tenant substantiated the Landlord's claim that rent was unpaid for at least two consecutive months in 2024, namely November and December.

For this reason, I find the November 4, 2024 10-Day Notice is valid. I find the Tenant confirmed their non-payment of rent for the tenancy agreement they had in place for this rental unit. I dismiss the Tenant's Application D for this reason.

Under s. 55 of the *Act*, when a tenant's application to cancel an end-of-tenancy notice is dismissed and I am satisfied that the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

Here, I find the November 4, 2024 10-Day Notice complies with the requirements of form and content; therefore, I grant the Order of Possession to the Landlord. The tenancy is ending for this reason.

*B. Is the Landlord entitled to compensation for rent amounts owing?*

The *Act* s. 55(1.1) prescribes, in these circumstances, a monetary order to the Landlord for unpaid rent. I find the Landlord's evidence is sound on the exact amount of rent owing from the Tenant: \$4,671.70 as of December 1, 2024.

I find each notice of rent increase that the Landlord served over the course of the tenancy was valid and binding on the Tenant concerning rent amounts.

The *Act* s. 72(2) provides that, in any amount owing from a tenant to a landlord, a landlord may retain the security deposit as funds toward that owed amount, with authorization. I so authorize the Landlord to retain the security deposit, in full, as funds towards their claimed compensation for rent amounts owing.

*C. Is the One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The *Act* s. 34 provides that, unless a landlord consents in writing, a tenancy must not assign a tenancy agreement or sublet a rental unit.

The tenancy agreement in place between the Tenant and Landlord here mirrors this language of the *Act*. There is a specific term of the agreement in place expressly for this purpose.

The Tenant in the hearing admitted they were subletting to other occupants in the rental unit. I find the Tenant violated the term of the tenancy agreement, as well as s. 34 of the *Act*. This constitutes a valid reason for the Landlord to end the tenancy, and I find the One-Month Notice is valid for this reason.

The Landlord is legally entitled to an order of possession for this reason. The form itself complies with s. 52 requirements of form and content. Given that the tenancy is ending by reason of the 10-Day Notice, I grant no separate order of possession to the Landlord in line with the One-Month Notice.

*D. Is the Landlord obligated to comply with the Act/tenancy agreement?*

I dismiss the Tenant's repeated Application grounds for the Landlord's compliance with the tenancy agreement. I find the Tenant presented several claims about the Landlord's

conduct over the course of the tenancy, and the content of the tenancy agreement itself, in order to deflect from the key issues surrounding this tenancy. I dismiss the Tenant's claims as either irrelevant, or marginal to the core issues concerning the validity of the Landlord's 10-Day Notice and One-Month Notice.

Moreover, the Tenant's claim for the Landlord's compliance are issues that concern an ongoing tenancy; however, this tenancy will end with the order of possession I am granting to the Landlord.

*E. Is the Landlord subject to suspended/set conditions on their right to enter the rental unit? Is the Tenant authorized to change the locks at the rental unit?*

As above, these are issues that concern an ongoing tenancy, and this tenancy shall end with the Landlord's service of the order of possession.

*F. Is the Tenant eligible for recovery of the Application filing fee?*

The Tenant was not successful on any application; therefore, I grant no recovery of the Application filing fees they paid to the Residential Tenancy Branch. As set out above, the Tenant did not minimize this part of their Application (as they are bound to do via s. 7 of the Act) by amending their existing application.

*G. Is the Landlord eligible for recovery of the Application filing fee?*

The Tenant paid the \$100 filing fee for Application E on November 14, 2024.

## **Conclusion**

I grant an Order of Possession to the Landlord **effective seven (7) days after the Landlord's service of this Order of Possession on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I grant the Landlord a Monetary Order in the amount of **\$3,721.70** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 67 of the Act	\$4,671.70
authorization to retain all of the security deposit	-\$1,050.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$ 3,721.70</b>

I provide the Landlord with this Monetary Order in the above terms and the Landlord must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

As set out above, I dismiss the Tenant's other Applications (Application A, Application B, Application C) in their entirety, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 9, 2024

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Residential Tenancy Branch