



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes

For the Tenant: CNR-MT, RR, RP

For the Landlord: OPR-DR, MNR-DR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The Tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the Landlord
- an order extending the time to file an application disputing the Notice issued by the Landlord
- a reduction in monthly rent
- an order requiring the Landlord to make repairs to the rental unit

The Landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the Tenant
- a monetary order for unpaid rent
- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The Landlord confirmed receiving the Tenant's Notice of Dispute Resolution Proceeding, which included the application, notice of hearing, but no evidence. The Tenant said they were not sure of how to serve evidence or that it was required. The Tenant did not remember the date they served the Landlord with their application.

The Tenant confirmed receiving the Landlord's Notice of Dispute Resolution Proceeding, which included the application, notice of hearing, and evidence by registered mail, filed on March 22, 2025.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this Decision.

Preliminary Issue –

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the Tenant listed multiple claims. I find the most urgent matter to consider is the Tenant's request for cancellation of the Notice. I find the two additional claims are not sufficiently related to whether this tenancy could end or continue, which I find is the primary issue. The balance of the Tenant's application will be addressed within this Decision.

Further, the Tenant listed the Landlord's agent, LL, as the Respondent/Landlord. I exercise the authority granted to me under section 64(3) to amend the Tenant's application to list the Landlords as Respondents, as they were named on the written tenancy agreement.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the Notice?

Is the Landlord entitled to an order of possession of the rental unit due to unpaid rent and monetary compensation from the Tenant for unpaid rent?

Is the Landlord entitled to recovery of the filing fee paid for their application?

Background and Evidence

The written tenancy agreement shows that the tenancy began on December 1, 2024, monthly rent is \$3000, due on the first day of the month, and the Tenant paid a security deposit of \$1500.

On March 6, 2025, the Landlord served the Tenant with a 10 Day Notice, by registered mail. The Notice was signed and dated March 6, 2025, listed an effective move-out date of March 21, 2025, and unpaid rent of \$6000 due on March 1, 2025, which was the unpaid rent for February and March, 2025. The Tenant said in their application they received the Notice on March 11, 2025.

The Landlord's agent testified that the Tenant failed to pay the monthly rent listed within five days and has not paid any rent since the 10 Day Notice was given to them. The Landlord stated that the Tenant failed to pay the monthly rent for February and March 2025, and the Tenant has not paid the April 2025 monthly rent of \$3000, leaving a total rent deficiency of \$9000 through the day of the hearing.

In response, the Tenant claims that the Landlord's agent, PC, agreed to provide rent relief due to the water leak that occurred in December 2024, and the lack of repairs. The Tenant further submitted that PC withdrew the February 2025 10 Day Notice that was served after talking to the owner. The Tenant confirmed they have not paid the monthly rent for February, March or April 2025, due to the condition of the rental unit, mold issues and the lack of response from the Landlord or property managers.

The Landlord's agent denied that the Tenant was given permission to not pay rent. Further, the Landlord submitted evidence of work being done around the property.

The Landlord, KL, said they want the Tenant to be gone by May 1, 2025.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Tenant's application

Should the Landlord's 10 Day Notice be cancelled or enforced?

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Section 46 of the Act states that upon receipt of a 10 Day Notice, a 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 Residential Tenancy Branch.

When a Tenant disputes a 10 Day Notice, they must be able to prove that they did not owe the rent, or for other specific reasons, such as they had the right under the Act to deduct all or a portion from their rent as follows:

1. To recover an illegal rent increase, pursuant to section 43(5) of the Act;
2. For a security deposit or pet damage deposit that is over the allowable amount, pursuant to section 19 of the Act;
3. For the cost incurred to complete an emergency repair, pursuant to section 33 of the Act; or
4. An order from an Arbitrator allowing a deduction or with written permission of the landlord.

The Tenant filed their application within the required time allowed, as the 5th day of receipt of the 10 Day Notice was on March 16, 2025, which was a Sunday. The Tenant filed their application the next business day on March 17, 2025. However, it is clear and undisputed that the Tenant did not pay the rent listed on the 10 Day Notice or any rent since then.

Further, I find the Tenant submitted insufficient evidence that they had a legal right to withhold the rent. The Tenant submitted the condition of the rental unit was the reason rent was not paid. Under section 33 of the Act, mould is not considered an emergency repair, and even at that, there was no evidence the Tenant has paid for any repairs, meaning the Tenant had no legal right to deduct any amount from the monthly rent.

I therefore find the Landlord submitted sufficient evidence to support the Notice, which I find complies with section 52 of the Act as to form and content. As a result, I find the

tenancy has ended due to the Tenant's failure to pay rent owed under the tenancy agreement and the Landlord is entitled to regain possession of the rental unit. I order the tenancy ended on March 21, 2025, the effective date of the 10 Day Notice.

For this reason, I dismiss the Tenant's application seeking cancellation of the Notice, without leave to reapply.

I find that the Landlord is entitled to, and I therefore grant them, an order of possession for the rental unit pursuant to section 55 (1) of the Act.

In consideration of the Landlord's statements at the hearing as to when they want the Tenant gone, I grant the order of possession to be effective **at 1:00 pm on April 30, 2025, after service on the Tenant.**

Should the Tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The Tenant is informed that if they do not vacate the rental unit as ordered, the Tenant can be held responsible to pay all **bailiff removal costs** incurred by the Landlord.

Is the Landlord entitled to a Monetary Order for unpaid rent?

I find that the Landlord submitted sufficient, undisputed evidence to show that the Tenant did not pay the monthly rent listed on the Notice or any further rent owed and they now owe a total amount of unpaid rent of \$9000 through the date of the hearing.

Section 55(1.1) of the Act applies and states:

55(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.

Therefore, I find the Landlord is entitled to, and I grant, a Monetary Order for unpaid rent in the amount of \$9000, comprised of unpaid rent for February, March and April 2025, or \$3000 each month.

Should the Tenant fail to pay the Landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The Tenant is informed that costs of such enforcement are recoverable from the Tenant.

Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit?

As the tenancy is ending, I find this request is now a moot issue. This issue deals with an ongoing tenancy.

For this reason, I dismiss the Tenant's application for repairs, without leave to reapply.

Is the Tenant entitled to an order for a rent reduction?

The Tenant applied for a rent reduction of \$6000.

I find the Tenant has not provided a detailed accounting of how they arrived at a monetary claim of \$6000. It is clear the Tenant's claim equals to the unpaid rent they owed for February and March 2025, but there was no explanation of how they arrived at this amount. The Tenant confirmed they did not vacate the rental unit for the two full months, or at all.

I dismiss the Tenant's monetary claim with leave to reapply, for failure to comply with section 59(2)(b).

Landlords' application

As I have granted the Landlord an order of possession of the rental unit and a monetary order for unpaid rent of \$9000, based on the Tenant's application, I find I do not need to determine the Landlords' application.

I, however, grant the Landlord recovery of the filing fee of \$100. The Tenant received the 10 Day Notice on March 11, 2025, and there was no evidence to support that at the time the Landlords filed their application on March 22, 2025, that the Tenant had filed to dispute the 10 Day Notice within the 5 day time period allowed to dispute the Notice. I find it reasonable that the Landlord would file their application to enforce the 10 Day Notice and for this reason, I grant the Landlord recovery of their filing fee of \$100.

Conclusion

The Tenant's application for cancellation of the Landlord's 10 Day Notice is dismissed, without leave to reapply.

The Landlords are granted an Order of Possession effective at 1:00 pm on April 30, 2025, after service of this Order on the Tenant.

The Landlords are granted a Monetary Order in the amount of \$9100 for the total unpaid rent through the day of the hearing of \$9000 for February, March and April 2025, plus the \$100 filing fee granted to the Landlord through their application for dispute resolution.

The Tenant's application for an order for the Landlord to make repairs to the rental unit is dismissed, without leave to reapply.

The Tenant's application for a rent reduction is dismissed, with leave to reapply.

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: April 15, 2025

Residential Tenancy Branch