



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNR, OPR, MNRL - S, LRSD, FFL

Introduction

This hearing dealt with cross applications. The Tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord applied for an Order of Possession and Monetary Order for unpaid rent; authorization to retain the security deposit in partial satisfaction of the unpaid rent; and, recovery of the filing fee.

Both parties appeared at the hearing or were represented.

Service of hearing materials

Both parties confirmed receipt of each other's hearing packages via registered mail. The materials were admitted into evidence.

Naming of Landlord

The Tenant had named the Landlord as an individual with the initials A.S. The Tenant testified that this is the person she has had exclusive dealings with throughout her tenancy.

The Landlord's agent submitted that A.S. is actually the son of the owner and A.S. had been managing the rental property for his father. The owner of the property is an individual with initials S.S. who is named on the Landlord's Application for Dispute Resolution.

I note that included in the Tenant's evidence is an image of a BC Assessment letter addressed to S.S. at the rental unit address. Therefore, I accept that S.S. is an owner of the property and meets the definition of "Landlord" under section 1 of the Act. Therefore, I find it appropriate to name S.S. as a Landlord.

As for naming A.S. as a Landlord, I also accept the Tenant's submissions and evidence that A.S. was acting as or on behalf of the owner throughout the tenancy until more

recently. An owner's agent meets the definition of "Landlord" under section 1 of the Act. Therefore, I also leave A.S. as a named Landlord.

The person appearing as agent for the Landlord submitted a authorization letter signed by S.S. and I accept that the agent is authorized to represent the Landlord for this proceeding.

Amendment of monetary claim

The Landlord's agent requested the Landlord's monetary claim be amended to include loss of rent for the month of August 2025 since the Tenant has continued to occupy the rental unit without paying any rent while awaiting this proceeding. Rule 7.12 of the Rules of Procedure provides:

7.12 Amending an application at the hearing

An application can be amended at the hearing only in circumstances:

- that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, or
- where the applicant requests an amendment to their application and the respondent consents to the amendment.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the request to amend the monetary claim to include loss of rent for the month of August 2025, to reflect the Tenant's continued occupation of the rental unit while awaiting this proceeding, without paying rent, is reasonably foreseeable and I amend the Landlord's monetary claim accordingly.

Opportunity to reach settlement

During the hearing, the Landlord's agent made two offers of settlement. The Tenant did not agree to accept either offer. At the end of the teleconference call the Tenant stated that she may be able to extend the tenancy or her move-out date if she were to have an opportunity to speak with A.S. rather than the agent appearing for this proceeding.

Although the Landlord's agent object, pointing to the signed authorization letter, given the dire circumstances the Tenant faces, I granted the Tenant until end of day on August 13, 2025 to obtain a written agreement with A.S., if one is reached, and that she

and the Landlord, or Landlord's agent, must provide me with a duly executed copy of such an agreement.

At the time of writing this decision, I have not received a copy of a settlement agreement reached between the Tenant and the Landlord or Landlord's agent. Rather, the Tenant uploaded a screen shot of her cell phone showing several attempts were made by her to contact A.S. by text message and there was no response from A.S.

In light of the above, and as I informed the Tenant during the hearing, in the absence of a settlement agreement, I proceed to make a decision based on the provisions of the Act and the submissions presented to me by the Tenant and the Landlord's agent.

Issue(s) to be Decided

Should the 10 Day Notice be upheld or cancelled? If upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid and or loss of rent?

Is the Landlord authorized to retain the Tenant's security deposit in partial satisfaction of the unpaid rent?

Is the Landlord entitled to recover the filing fee from the Tenant?

Background and Evidence

The parties were in agreement that a written tenancy agreement was not prepared, and the parties entered into an oral tenancy agreement.

Tenancy agreement details

Below, I have summarized the information presented to me with respect to the tenancy details:

- **Tenancy Start Date:** Disputed — Landlord claims it started in September 2022; Tenant claims it started in 2021.
- **Rent Amount:** Disputed — Landlord claims rent was set at \$1,450.00 per month and remained at \$1,450.00 per month throughout the tenancy; Tenant claims it started at \$1,350.00 and increased to \$1,400.00 in January 2024.
- **Rent Due Date:** The parties provided consistent statements that rent was payable on the first day of every month.

- **Security Deposit:** Disputed – Landlord claims \$725.00 was paid by the Tenant; Tenant believes it was \$700.00.
- **Pet Damage Deposit:** The parties agreed that no pet damage deposit was paid.

The Landlord's agent was willing to concede to the facts put forth by the Tenant described above since he did not have any documentation from the Landlord to prove otherwise.

Rent Payment History

Below, I have summarized the parties' positions concerning rent payments

- **Landlord's Claim:** The Tenant did not rent paid from April 2025 to August 2025, except \$650.00 paid on April 10, 2025 via etransfer, leaving a balance owing of \$5,150.00 when the 10 Day Notice was issued on July 2, 2025 and \$6,600.00 as of the date of this hearing.
- **Tenant's Claim:** The Tenant paid \$2,000.00 in cash to the A.S. on April 22, 2025 but did not pay \$650.00 by etransfer as stated by the Landlord's agent. The Landlord would only take cash payments, and she did not etransfer the Landlord. The \$2,000.00 payment was for rent owed for April 2025 and preceding months. No rent has been paid since April 22, 2025 due to health and financial issues faced by the Tenant.

The Landlord's agent was willing to concede to the facts put forth by the Tenant, as described above, since he did not have any documentation from the Landlord to prove otherwise.

10 Day Notice to End tenancy for Unpaid Rent

The Landlord's agent prepared a 10 Day Notice and had it signed by the Landlord. The Landlord's agent sent it to the Tenant by registered mail on July 2, 2025 and a search of the Canada Post tracking number shows the registered mail was received on July 5, 2025. The Tenant acknowledges receiving the 10 Day Notice.

The 10 Day Notice has a stated effective date of July 14, 2025 and indicates rent of \$5,150.00 was outstanding as of July 1, 2025.

It is agreed that after serving the 10 Day Notice, the Tenant did not pay any amount towards unpaid rent. The Tenant filed to dispute the 10 Day Notice on July 10, 2025.

In filing her application, the Tenant stated the A.S. and his wife had wanted to help the Tenant by allowing her to move into a suite on their farm and allow the Tenant to work for them in exchange for rent. The suite was supposed to be ready for March 2025, but

it was undergoing renovations and was pushed back to April 2025 which has caused the Tenant to incur greater rental arrears at the rental unit.

The Tenant also argued that the Landlord is “shady” by not preparing written documentation, providing different service addresses, and only accepting cash. The Landlord’s agent has also presented information that is riddled with incorrect information, and he has a bad reputation for conducting business as a property manager without a license, as seen in online searches.

Finally, the Tenant testified that she was able to get \$1,060.00 in crisis funding from the Ministry to be put toward the rental arrears, and the Ministry is willing to continue making payments to pay off the rental arrears, if the Landlord continues the tenancy. The Tenant did not pay the \$1,060.00 received from the Ministry on July 18, 2025 to the Landlord since the Landlord’s agent stated they did not want partial payments, and the Tenant used the funds to support her children.

The Landlord’s agent stated the Landlord is not willing to continue the tenancy. As for incorrect information, the Landlord’s agent explained he has relied upon oral statements of A.S. and does not have documentation other than the 10 Day Notice. The Landlord’s agent is willing to concede to the facts put forth by the Tenant concerning amounts due and amounts paid as well as the dates indicated by the Tenant. It remains that the Tenant owed a significant amount of rent when the 10 Day Notice was issued when the tenant’s figures are used. The Tenant acknowledged that she did not have money to put toward the rental arrears until she received the crisis money of \$1,060.00 on July 18, 2025.

Order of Possession

The Landlord’s agent was willing to agree to an Order that is effective on August 31, 2025 if the Tenant would agree to move out by then rather than seven days after service that is typical in these types of cases.

The Tenant stated she requires more time to move out given her health issues, special needs of her child and limited financial means. The Tenant requested that she be allowed to occupy the rental unit until October 15, 2025.

Analysis

Under section 26 of the Act, a Tenant is required to pay rent when due in accordance with their tenancy agreement, even if the Landlord has violated the Act, regulations or tenancy agreement, unless the Tenant has a legal right to withhold rent.

I find the Tenant was required to pay rent of \$1,350.00 at the start of the tenancy, as submitted by the Tenant. I also accept that the Landlord increased the rent starting in January 2024 to \$1,400.00, as submitted by the Tenant, and that this was done without

a written Notice of Rent Increase in the approved form. Therefore, I find the rent increase to be unlawful and the Tenant was obligated to pay a monthly rent of \$1,350.00 throughout the tenancy.

It is undisputed and acknowledged by the Tenant that the Tenant failed to pay any rent for the months of May 2025, June 2025 and July 2025 to A.S. or the Landlord's agent.

As for having a lawful right to withhold rent, I find there is evidence that supports a legal right to withhold some of the rent payable to the Landlord. Under section 43(5) of the Act, a Tenant may recover payment of an unlawful rent increase by deducting it from rent otherwise payable. In accepting the Tenant's submissions, I find the Tenant overpaid rent by \$50.00 per month for the months of January 2024 through April 2025 which amounts to \$800.00 [16 months x \$50.00 per month]. Under section 19(2) of the Act a Tenant may recover the overpaid portion of a security deposit by deducting it from rent otherwise payable. In accepting the Tenant's submissions, I find the Tenant overpaid the security deposit by \$25.00 since a security deposit can be no more than 50% of the monthly rent, which means the Landlord was not allowed to collect a security deposit in excess of \$675.00. Therefore, I find the Tenant had a legal right to deduct \$800.00 and \$25.00 from rent otherwise payable.

In deducting the unlawful rent increases and the overpaid security deposit from rent payable, it remains that the Tenant still owed a significant amount of rent when the 10 Day Notice was served. I am satisfied the Tenant would have owed the Landlord at least \$3,225.00 when the 10 Day Notice was served to the tenant. I calculate this amount as being: \$1,350.00 x 3 (rent for May 2025, June 2025 and July 2025) less \$825.00 in rent and security deposit overpayments.

As for the Tenant's arguments concerning the Landlord or Landlord's agent(s) being "shady" or licensed, I find such allegations are irrelevant to the matter at hand and not a basis to cancel the 10 Day Notice. Upon review of the 10 Day Notice, I find the notice has been duly completed, including the owner's name and signature, and a service address was provided for the Landlord's agent so that the Tenant may send payment or dispute the 10 Day Notice.

Despite the amount appearing on the 10 Day Notice being incorrect, the Tenant did not pay any amount of rent within five days of receiving the 10 Day Notice. I accept that the Tenant did not have the financial means to do so; however, financial hardship due to financial or health issues is not a basis to cancel a 10 Day Notice.

As for the Tenant's submissions concerning A.S.'s offer to help the Tenant by offering a different rental unit on a different property, I accept that such discussions took place and the Tenant was shown the other property in January 2025; however, I do not see evidence that would indicate the Landlord or A.S. waived entitlement to receive rent for the rental unit while the other property was undergoing renovations. In fact, the Tenant's text message exchanges with A.S. that were submitted into evidence by the

Tenant indicate there was still a requirement to pay rent for the rental unit. In the text messages, I see A.S. pointing to outstanding rent and the Tenant apologizing for being late and thanking the Landlord for being patient while she tries to find alternative sources of money. Therefore, I find the Tenant remained obligated to pay rent for the rental unit while awaiting other living accommodation.

Finally, the willingness of the Ministry to provide funding to pay off the rental areas in future payments is not a basis for cancellation of the 10 Day Notice. The Landlord is not obligated to re-instate or continue this tenancy once it has already ended on the basis of a promise to pay. The tenant had until July 10, 2025 to pay the rental arrears and did not. I find the tenancy came to an end for unpaid rent 10 days after the 10 Day Notice was received by the Tenant, on July 15, 2025. The first payment made by the Ministry was on July 18, 2025 and it was given to the Tenant. The time limit for nullifying the 10 Day Notice had already lapsed even if the money had been given to the Landlord, which it was not.

All of the above considered, I find dismiss the Tenant's request for cancellation of the 10 Day Notice. I find this tenancy is at an end due to unpaid rent and I find the Landlord entitled to regain possession of the rental unit. Under sections 46 and 55 of the Act, I provide the Landlord with an Order of Possession.

Section 55(3) of the Act affords me some discretion in determining the effective date of an Order of Possession. I have considered that the Tenant is faced with very limited financial means and children that may have special needs. However, I must also consider undue hardship to the Landlord if I were to grant the Tenant more time to vacate and that rent has not been paid for four months, since April 2025. With these considerations in mind, I provide the Landlord with an Order of Possession effective August 31, 2025 rather than the seven (7) days that is more typical for cases involving unpaid rent.

I provide the Landlord with a Monetary Order for unpaid rent in the amount of \$3,225.00 for the months up to an including July 2025, as calculated previously in this analysis. I further award the Landlord \$1,350.00 for loss of rent for August 2025 to reflect the Tenant's continued occupation of the rental unit during August 2025.

I authorize the Landlord to retain the Tenant's security deposit, plus interest, as requested in partial satisfaction of the unpaid rent. The security deposit is \$675.00 after applying the \$25.00 overpayment to rent. I calculate the accrued interest on the security deposit to be \$37.30.

Under section 72 of the Act, I award the Landlord recovery of the \$100.00 filing fee, as requested.

Conclusion

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

I grant an Order of Possession to the Landlord effective at 1:00 p.m. on **August 31, 2025**, after service upon the Tenant. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided a Monetary Order in the sum of \$3,962.70 under the following terms:

Monetary Issue	Granted Amount
a Monetary Order under section 67 of the Act for: <ul style="list-style-type: none"> • unpaid rent for May 2025, June 2025, July 2025 • loss of rent for August 2025 	\$3,225.00 \$1,350.00
a Monetary Order for recovery of the filing fee under section 72 of the Act	\$100.00
Less: authorization to retain the Tenant's security deposit and interest in partial satisfaction of the unpaid rent	-\$675.00 -\$37.30
Total Amount	\$3,962.70

The Landlord is provided with this Monetary Order in the above terms to serve and enforce upon the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced 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 *Residential Tenancy Act*.

Dated: August 15, 2025

Residential Tenancy Branch