



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT, RR, CNR, RP, LAT

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other.

### Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Ten Day Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply.

### Issues to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled? If not, is the landlord entitled to an order of possession?

Should the tenant be given an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Should the tenant be entitled to a rent reduction?

Should a repair order be made to compel the landlord to conduct repairs on the suite or unit?

Should an order be given to allow the tenant or his guests to access the unit?

### Background and Evidence

SE gave the following testimony on behalf of the landlords. The tenancy began on June 15, 2018. The current monthly rent of \$1178.75 is due on the first of each month. The tenant paid \$400.00 towards the April 2020 rent leaving a shortfall of \$778.75. The landlord issued a Repayment Plan as required as this shortfall occurred during the Provincial State of Emergency during Covid-19. The landlord testified that the Repayment Plan was given to the tenant on October 26, 2020 with eight equal payments of \$97.34: the first payment due on December 1, 2020.

The landlord testified that the tenant did not pay that amount for December and on December 2, 2020 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant did not pay the repayment portion for January and February as well. The landlord testified that they have not received any funds from the original shortfall from April 2020. The landlord requests an order of possession and for this tenancy to end.

TB gave the following testimony on behalf of the tenant. TB testified that E.Fry Society paid the \$778.75 sometime in April 2020. TB testified that there is no outstanding rent and that a repayment plan was not required. TB testified that its very clear that no rent is owing and that this tenancy should continue.

## Analysis

Sections 26 and 46 address the issue before me as follows.

### ***Rules about payment and non-payment of rent***

**26** (1) *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 confirmed that he did not pay the rent for the repayment plan in full within five days of being deemed to have received the 10 Day Notice. The tenant has filed an application pursuant to section 46(4) of the Act to dispute the notice. The tenant relies on the letter from E.Fry Society to justify his nonpayment. The undated letter is of limited evidentiary weight. The letter states:

*The landlord should have received the funds through direct deposit to his bank account in the timeframe of April 6-9, 2020.*

The letter states “should have received funds”. TB submits that this letter was received on October 29, 2020; six months after payment. The tenant is a client of the E.Fry Society. I find the letter to be very general and limited in information. After six months, the tenant should have been able to obtain a more detailed and definitive document to show that payment was made to the landlord and on what exact date; the letter before me doesn’t reflect that. Based on the insufficient evidence before me, I find that the tenant has not shown that all rental arrears have been paid. Further, I am satisfied that the landlord has provided sufficient proof that there is still \$778.75 of unpaid rent as of this date, accordingly; I find that the landlord is entitled to an Order of Possession and that this tenancy is terminated. I further find that the notice complies with section 52 of the Act in its form and content.

In this case, this required the tenant to vacate the premises by December 15, 2020. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the Act, which must be served on the tenant(s). If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The landlord is granted an order of possession. The tenancy is terminated.

The tenants monetary claim is dismissed with leave to reapply. The remainder of the tenant's application is dismissed in its entirety without 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: February 22, 2021

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Residential Tenancy Branch