



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      TT: FFT, CNR, MNDCT, RR, LRE, PSF, MNRT  
                                 LL: MNRL-S, OPU, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on May 27, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 23, 2021 (the “10 Day Notice”);
- a monetary order for damage or compensation;
- an order granting a rent reduction;
- an order restricting the Landlord’s right to enter the rental unit;
- an order that the Landlord provide a service or facility; and
- a monetary order for the cost of emergency repairs.

The Landlord’s Application for Dispute Resolution was made on June 9, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent and utilities;
- an order of possession for unpaid rent and utilities;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. The Landlord confirmed having received the Tenant’s Application and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section

71 of the *Act*. The Landlord stated that he served his Application and documentary evidence to the Tenant. The Landlord provided no proof of service. The Tenant stated that he did not received the Landlord's Application package.

### Preliminary Matters

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...

In this case, the Landlord has provided insufficient evidence to demonstrate that they served the Tenant with the hearing package and documentary evidence in accordance with Section 89 of the *Act*. As such, the Landlord's Application is dismissed with leave to reapply.

Regardless, I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

At the start of the hearing, the parties confirmed that the tenancy has ended. The Tenant stated that he vacated the rental unit on August 1, 2021. The Landlord stated that he was prevented from attending the rental property until August 17, 2021 at which point he confirmed the Tenant had vacated.

As both parties have confirmed that the tenancy has ended, I find that the Tenant's claims for; an order cancelling the 10 Day Notice, an order granting a rent reduction, an order restricting the Landlord's right to enter the rental unit, and an order that the Landlord provide a service or facility is therefore dismissed without leave to reapply.

The hearing proceeded based on the Tenant's claim for a monetary order for compensation pursuant to Section 67 of the *Act*, and to consider if the Landlord is entitled to a monetary order for unpaid rent pursuant to Section 55 and 67 of the *Act*.

### Background and Evidence

The parties testified to the following; the tenancy began on March 1, 2021; however the Tenant did not move into the rental unit until the third week of March 2021. During the tenancy the Tenant was required to pay rent in the amount of \$600.00 which was due on the first day of each month. The Tenant was also responsible for paying utilities to the Landlord. The Tenant stated that he moved out of the rental unit on August 1, 2021. The Landlord stated that the Tenant had a trailer on the rental property up until August 17, 2021. The parties do not have a written tenancy agreement.

The Tenant stated that he is seeking monetary compensation in the amount of \$2,400.00 in relation to construction work he completed at the rental unit. The parties agreed that they had a previous working relationship before the tenancy started. The Tenant stated that he had been compensated \$35.00 an hour for past work he completed. The Tenant stated that once the tenancy started, the parties formed a verbal agreement where every hour of work the Tenant performed on the rental unit, the Landlord agreed to match the same amount of work at the Tenant's other residence.

The Tenant estimates that he completed 48 ½ hours of work on the rental unit and that the Landlord has not performed any work for the Tenant in return. As such, the Tenant is claiming for monetary compensation based on the \$35.00 he had once been paid per hour. The Tenant confirmed that the parties had not agreed to monetary compensation, or a reduction of rent, just an exchange of work hours.

The Landlord responded and stated that he agreed to work shoulder to shoulder with the Tenant, however, this never materialized. The Landlord disagrees with the amount of work hours that the Tenant is claiming for. The Landlord estimates that the Tenant only worked 5 hours at the rental unit.

The parties testified and agreed that the Tenant withheld rent for May, June, and July 2021 before the Tenant vacated the rental unit on August 1, 2021. The Landlord stated that the Tenant's personal property, including a trailer remained at the rental property until August 17, 2021. The parties also agreed that the Tenant withheld paying utilities during this period as well. During the hearing, the Landlord was unable to provide an exact monetary amount of utilities being sought. The Landlord gave a generalized estimate of \$250.00 per month.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *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 is claiming for compensation in the amount of \$2,400.00 for construction work he completed at the rental unit. While I accept that there was a verbal agreement between the parties with respect to the work completed, I find that the Tenant's own testimony indicates that this agreement never included monetary compensation or to reduce the rent by a certain amount. As such, I find that the Tenant was not entitled to withhold rent from the Landlord.

Furthermore, I find that the Tenant's claim relates to employment matters, which the Tenancy Branch does not have jurisdiction over. As such, I dismiss the Tenant's Application for monetary compensation without leave to reapply.

According to Section 55 of the Act: (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

**(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.**

I find that the 10 Day Notice that the Tenant applied to dispute complies with the requirements for form and content. I accept that the parties agreed that the Tenant did not pay rent in the amount of \$600.00 from May, June and July 2021. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$1,800.00 for unpaid rent. I find it appropriate in this circumstance to order that the Landlord retain the Tenant's security deposit in partial satisfaction of the monetary award.

I find that the Landlord provided insufficient evidence to demonstrate that the Tenant overheld the rental unit until August 17, 2021. As such, I find that the Landlord is not entitled to compensation for loss of rent for August 2021. The Landlord also had unpaid utilities listed on the 10 Day Notice. During the hearing, the Landlord was unable to

provide an accurate amount of utilities owed, only providing an estimate of \$250.00 per month. I find that the Landlord has provided insufficient evidence to demonstrate the true value of their loss relating to unpaid utilities. As such, I decline to award the Landlord compensation for unpaid utilities.

Pursuant to section 55 and 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,500.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,800.00
<i>LESS</i> security deposit:	-( <i>\$300.00</i> )
<b>TOTAL:</b>	<b>\$1,500.00</b>

### Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$1,500.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 2, 2021

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Residential Tenancy Branch