



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR DRI OLC FFT

### Introduction

The tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (“Act”).

In addition, they applied for relief under sections 41 through 44 of the Act (dispute a rent increase), section 62 of the Act (an order for landlord compliance), and section 72 of the Act (recovery of the cost of the application filing fee).

At the hearing on November 2, 2021, only the landlord and his wife attended. The landlord was affirmed.

### Preliminary Issue 1: Removal of Names from Application

It should be noted that two individuals, other than the named tenant on this application, made the application for dispute resolution on August 1, 2021. However, based on the landlord’s undisputed oral and documentary evidence, these two individuals are not, and were not, tenants under the tenancy. They appear to be roommates (that is, possibly subtenants). As roommates, they have no legal standing in this dispute and are not subject to the jurisdiction of the Act. Their names are removed from the application.

However, as explained to the landlord and his wife during the hearing, if the landlord believes that there is a cause of action by him against the two roommates, he may consider whether a claim may be made through either the Provincial Court of British Columbia (Small Claims Court) or the Civil Resolution Tribunal.

The landlord will need to make inquiries at the court and the tribunal to determine how to pursue a claim.

## Preliminary Issue 2: Non-Attendance of Tenant

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As the tenant failed to attend the hearing to prove his claim for an order under section 62 of the Act, for an order disputing an alleged rent increase, and for an order to recover the cost of the filing fee, these aspects of the tenant's application are dismissed without leave to reapply.

## Issue

Is the tenant entitled to an order cancelling the Notice?

## Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began November 1, 2017. The tenant and a co-tenant (who has long ago vacated) signed a written tenancy agreement. A copy of the agreement was in evidence. The landlord gave evidence that rent is \$2,350.00 and it is due on the first day of the month. While there is no longer a pet damage deposit in trust, the landlord confirmed that there remains in trust a security deposit of \$1,175.00.

The landlord testified that he served the Notice in-person on the tenant's roommate on July 28, 2021. The roommate was an adult who appears to have lived with the tenant, and as such this method of service is acceptable under the Act.

A copy of the Notice was in evidence and it indicated that the tenant failed to pay rent in the amount of \$1,925.00 on July 1, 2021. The remainder of the Notice appears to have been fully and properly completed.

The landlord and his wife confirmed that, as of November 2, 2021, the tenant owes \$9,225.00 in rental arrears. This comprises unpaid amounts from 2020 through to the present day.

### Analysis

Where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement. It was the landlord's undisputed oral and documentary evidence that the tenant failed to pay the rent on July 1, 2021 (and for the months following) as required by the written tenancy agreement.

As such, taking into consideration all the undisputed, affirmed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground for serving the Notice. And, based on the same undisputed oral and documentary evidence, the landlord has proven that the tenant owes \$9,225.00 in rent arrears.

For the reasons given above, the tenant's application to cancel the Notice is dismissed without leave to reapply. I find that the Notice complies with section 52 of the Act in form and content. Thus, pursuant to section 55(1) of the Act the landlord is granted an order of possession.

A copy of the order of possession will be issued in conjunction with this decision, to the landlord. As explained during the hearing, the landlord must serve a copy of this order of possession on the tenant.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenant's security deposit of \$1,175 in partial satisfaction of the above-noted award.

Pursuant to section 55(1.1) of the Act, the tenant is hereby ordered to pay the landlord the balance of the arrears in the amount of \$8,050.00. A monetary order in this amount is issued in conjunction with this decision, to the landlord. As with the order of possession, the landlord must serve a copy of this monetary order on the tenant.

Conclusion

I HEREBY:

1. dismiss the tenant's application in its entirety, without leave to reapply;
2. authorize and order the landlord to retain the tenant's security deposit;
3. grant the landlord an order of possession that must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia; and,
4. grant the landlord a monetary order in the amount of \$8,050.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 2, 2021

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Residential Tenancy Branch