



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Application #1: FFT, CNR, OLC, MNDCT, LRE, PSF  
Application #2: FFT, CNR, MNDCT, LRE  
Application #3: OPR-DR, MNR-DR, FFL, MNRL-S, MNDCL

### Introduction

The Tenant brings two applications. The first filed on July 9, 2021 seeks the following relief:

- cancel a 10-Day Notice to End Tenancy dated July 5, 2021 pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”);
- an order pursuant to s. 62 of the *Act* that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- an order for monetary compensation pursuant to s. 67 of the *Act*;
- an order pursuant to s. 70 of the *Act* restricting the Landlord’s right to enter the rental unit;
- an order pursuant to s. 65 of the *Act* that the Landlord provide services or facilities required by the tenancy agreement or the *Act*; and
- return of their filing fee pursuant to s. 72.

In the Tenant’s second application, filed on August 12, 2021, the Tenant seeks the following relief:

- cancel a 10-Day Notice to End Tenancy dated August 5, 2021 pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”);
- an order for monetary compensation pursuant to s. 67 of the *Act*;
- an order pursuant to s. 70 of the *Act* restricting the Landlord’s right to enter the rental unit; and
- return of their filing fee pursuant to s. 72.

The Landlord brings an application seeking:

- an order of possession for unpaid rent pursuant to s. 55 of the *Act*;

- a monetary award for unpaid rent pursuant to s. 67 of the *Act*;
- a monetary award for compensation pursuant to s. 67 of the *Act*; and
- return of their filing fee pursuant to s. 72.

L.K. appeared as agent for the Landlord. The Tenant did not attend the hearing, nor did anyone appear on her behalf. As the Tenant failed to attend the hearing, it was conducted in her absence pursuant to Rule 7.3 of the Rules of Procedure.

As the Tenant failed to appear to advance her applications, I dismiss them in their entirety except for the orders to cancel the Notices to End Tenancy for unpaid rent, which were addressed during the hearing. I do so on the basis that it is the Landlord's onus to prove, pursuant to Rule 6.6 of the Rules of Procedure, that the Notices to End Tenancy are valid and enforceable.

The Landlord affirmed to tell the truth during the hearing. I highlighted Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing.

The Landlord advised having served the 10-Day Notice to End Tenancy of July 5, 2021 (the "10-Day Notice") by personally serving it on the Tenant on July 5, 2021. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* on July 5, 2021.

The Landlord further advised that they served their Notice of Dispute Resolution and evidence by personally serving them on the Tenant on July 28, 2021. I find that the Landlord's application materials were served in accordance with s. 89 of the *Act* on July 28, 2021.

#### Preliminary Issue – Landlord's Amendment

The Landlord filed to amend their application on October 5, 2021. In the amendment, the Landlord sought to include a claim for monetary compensation as well as revise their claim for unpaid rent.

The Landlord advised having served their amendment and associated evidence on the Tenant by way of registered mail sent to the Tenant on October 5, 2021. I find that the Landlord served the amendment and additional evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the amendment and evidence on October 10, 2021.

The Landlord has filed their amendment in accordance with Rule 4 of the Rules of Procedure and served the amendment in compliance with the *Act*. As there were no objections, the Landlord's additional claims were added to their application.

#### Issue(s) to be Decided

- 1) Whether the 10-Day Notice should be cancelled?
- 2) Is the Landlord entitled to an order of possession pursuant to the order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is the Landlord entitled to an order for monetary compensation?
- 5) Is the Landlord entitled to return of their filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord advised that the tenancy began on March 1, 2021. The Tenant's rent was \$1,480.00, paid on the first day of each month. There is an additional \$65.00 charged for the Tenant's parking space as set out in an addendum to the tenancy agreement. The Landlord further confirmed holding a security deposit of \$740.00 in trust for the Tenant. The Landlord provided a written copy of the tenancy agreement and the parking addendum.

In their submissions, the Landlord highlighted paragraph 23, which indicates that the parties had agreed to the Tenant paying a \$25.00 administrative fee for each month the Tenant was late in paying rent.

The Landlord indicated that the 10-Day Notice was issued on July 5, 2021 due to the Tenant's failure to pay rent and the parking fee on July 1, 2021. The 10-Day Notice indicates that the Tenant owed \$1,570.00. The Landlord advised that this number represented the \$1,480.00 for rent, the \$65.00 for the parking fee, and the \$25.00 administrative fee.

The Landlord advised that the Tenant had made a payment of \$750.00 on July 29, 2021 in partial satisfaction of the amount owed. The Landlord further advised that the Tenant had failed to make any further payments since July 29, 2021 and owed \$1,570.00 for each of the following months: August, September, October, and November 2021.

The Landlord also seeks compensation from the Tenant in the amount of \$1,232.42 related to damages the Landlord says were caused by the Tenant. The Landlord says that on September 5, 2021 the fire detection system for the residential property indicated that there was an open fault on the Tenant's floor. The Landlord investigated the rental units on the floor. The inspection led to the discovery that the smoke alarm and speaker within the Tenant's rental unit had been pulled down by the Tenant.

An invoice dated September 5, 2021 was provided by the Landlord. The invoice verifies the Landlord's narrative with respect to the damages to the fire detection system within the Tenant's rental unit. The invoice states the following:

Upon arrival, Tech found panel in trouble due to "Open Fault Signal Circuit Level X". Investigated and found speaker and smoke alarm had been removed in unit XXX. Reconnected the smoke alarm and tested operation, all good. The fire alarm speaker was damaged and requires replacement. Bypassed the speaker in order to get the fire alarm system back to normal service.  
Return trip required to replace speaker. Reset panel and restored system back to normal service.

[Identifying Information Redacted]

The invoice reflects that the cost of the repairs paid by the Landlord were \$1,232.42.

The Landlord advised that the Tenant continues to reside within the rental unit.

### Analysis

The Tenant seeks to cancel a 10-Day Notice to End Tenancy and the Landlord seeks an order of possession, an order for unpaid rent, and an order for monetary compensation.

Section 26 of the *Act* confirms a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement.

Section 46(1) of the Act confirms that a landlord may take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy. Pursuant to section 46(4) of the Act, a tenant has five days after receipt of a notice to end tenancy to either pay rent in full or to make an application to dispute the notice to end tenancy. Section 46(5) of the Act states that failure to pay rent in full or to make an application to dispute the tenancy within five days after receipt of the notice to end tenancy results in the conclusive presumption that the tenancy ends on the effective date of the notice to end tenancy and that the tenant must vacate the rental unit.

I accept the Landlord's evidence that the Tenant failed to pay rent, parking fees, and administrative fees from July to November 2021. I further accept that the Tenant paid \$750.00 on July 29, 2021, which did not cover the total amount due for July and was not paid within 5-days of the Tenant's receipt of the 10-Day Notice. I find that the 10-Day Notice was properly issued and complies with the formal requirements set out under s. 52 of the Act. As the 10-Day Notice is valid and was not cancelled by payment within 5-days, I dismiss the Tenant's application to cancel the notice. Accordingly, the Landlord is entitled to an order of possession.

Pursuant to s. 67 of the Act, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the Act, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the Act, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

I accept the Landlord's evidence and find that rent was \$1,480.00 due on the first day of each month as set out in the written tenancy agreement. I also find that the Tenant failed to pay rent for the months of July to November 2021. Taking into account the partial payment of \$750.00 by the Tenant on July 29, 2021, the Tenant owes \$6,650.00 to the Landlord for unpaid rent.

I accept the Landlord's evidence and find that the Tenant ought to have paid \$65.00 per month for parking to the Landlord as specified in the parking addendum. I further find that the Tenant ought to have paid the parking fees for the months of July to November 2021. The Landlord has demonstrated an entitlement to a monetary award in the amount of \$325.00 for the parking fees.

I accept that clause 23 of the tenancy agreement provided by the Landlord establishes a \$25.00 administrative fee to be paid by the Tenant if rent is not paid on time. Such fees are permitted by s. 7 of the Regulations when they are provided for in the tenancy agreement. That is the case here. The Landlord has demonstrated that the Tenant owes \$125.00 to the Landlord for administrative fees for July to November 2021.

The Landlord further applied for compensation related to damages caused by the Tenant. Section 32 of the *Act* provides that a Tenant has an obligation to repair and maintain the rental unit. Subsection 32(3) stipulates that a Tenant must repair damage caused by their actions or neglect. I find that the Landlord has established that the Tenant did, in fact, damage the fire detection system within her rental unit on or about September 5, 2021. I accept the Landlord's evidence in the form of the invoice and I find that the Landlord's cost of repairing the damage caused by the Tenant was \$1,232.42. The Landlord remains at liberty to reapply for further losses arising from the tenancy should that be necessary.

As the Landlord has been successful in their application, I find that they are entitled to their filing fee. Pursuant to s. 72(1), the Tenant shall pay \$100.00 for the Landlord's filing fee. Pursuant to s. 72(2), I order that the Landlord may retain the security deposit of \$740.00 they currently hold in trust for the Tenant in partial satisfaction of the total amount owed by the Tenant to the Landlord.

In consideration of the above, I find that the Landlord is entitled to a monetary award in the amount of \$7,692.42, which is calculated as follows:

|                              |                   |
|------------------------------|-------------------|
| Unpaid Rent:                 | \$6,650.00        |
| Parking Fees:                | \$325.00          |
| Administrative Fees:         | \$125.00          |
| Compensation for damage:     | \$1,232.42        |
| Filing Fee                   | \$100.00          |
| <u>Less security deposit</u> | <u>(\$740.00)</u> |
|                              | \$7,692.42        |

### Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice of July 5, 2021. The Landlord is entitled to an order of possession. Pursuant to s. 55 of the *Act*, the Tenant shall provide vacant possession of the rental unit to the Landlord no later than **two (2) days** after being served with the order.

I dismiss all other aspects of the Tenant's applications without leave to reapply as the tenancy is coming to an end.

I grant the Landlord a monetary award for unpaid rent, parking fees, and administrative fees owed from July to November 2021. Pursuant to s. 72(1), I order that the Tenant pay \$100.00 to the Landlord for their filing fees. Pursuant to s. 72(2), I order that the Landlord may retain the security deposit of \$740.00 in partial satisfaction of the amount owed by the Tenant. Taking into account the amounts owed by the Tenant and the security deposit retained by the Landlord, I order pursuant to s. 67 that the Tenant pay **\$7,692.42** to the Landlord.

It is the Landlord's obligation to serve the orders on the Tenant. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court. If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that 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: November 10, 2021

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Residential Tenancy Branch