



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: OPR MNR MNDC FF  
                                 Tenant: CNR OLC LRE FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 11, 2022. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord was present at the hearing along with one of the Tenants. Both parties confirmed receipt of each others application and evidence packages. No service issues were raised. Both parties provided affirmed testimony and confirmed they understood Rule 6.11.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are

related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the Notice issued.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities.

The Landlord's amendment and application for monetary compensation for damage or loss under the Act for late fees and NSF fees is dismissed, with leave to reapply, as I do not find these amounts are sufficiently related to whether or not the tenancy will end, based on unpaid rent by way of the Notice.

#### Issues to be Decided

- Should the Notices to End Tenancy be cancelled?
  - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that monthly rent is set at \$1,550.00 and is due on the first of the month. The Landlord holds a security deposit in the amount of \$775.00. The tenancy started on April 1, 2021, and is set for a fixed term of 1 year. 3 tenants are named on the tenancy agreement. However, the agreement is only signed by 2 of the 3 named tenants.

The Landlord stated that the Tenants paid by way of pre-authorized debit from when they moved in until November 2021. The Landlord stated that sometime in October 2021, the Tenant cancelled his pre-authorized rent payments. The Landlord stated that the Tenant came to the office to pay his rent by debit in November 2021, and the Landlord accepted and explained to the Tenant that this was a temporary measure only.

The Landlord stated she re-iterated to the Tenant that he agreed to pay rent via pre-authorized debit (as per the tenancy agreement), and that he needed to restore this payment method, rather than try to pay by debit each month, since debit was not always available. The Landlord stated that in December 2021, the Tenant again came to the

office and paid by debit, and she again reminded him that he needs to restore his pre-authorized debit payments, and comply with his tenancy agreement.

The Landlord stated that the Tenant failed to pay rent for January 2022, on the first of the month and so the Landlord issued the Notice on January 5, 2022, by posting it to the door of the rental unit. The Tenant acknowledged receiving the Notice on January 8, 2022. A copy of the Notice was provided into evidence, which shows that \$1,550.00 was outstanding at that time. The Landlord stated that the Tenant failed to make any payments for January 2022.

A copy of the February Notice was provided into evidence, which shows that the Tenant failed to pay his February rent, in the amount of \$1,550.00 on February 1, 2022. The Tenant acknowledged receiving this Notice on February 2, 2022. The Tenant acknowledged that he did not attempt to pay February rent. A copy of the March Notice was also provided into evidence, which the Tenant acknowledged receiving on March 2, 2022. The Landlord issued this Notice on March 2, 2022, because the Tenant failed to pay \$1,550.00 on March 1, 2022.

After not paying rent for January/February, the Landlord stated that the Tenant came to the office on March 4, 2022, and paid \$1,550.00. The Landlord stated that the Tenant paid rent for April in full, so March and April have been paid up. However, rent for January and February remains unpaid at this time.

The Tenant acknowledged that he has not paid any rent for January or February 2022, and he owes rent for these months. However, he opined that it was the Landlord's fault for not being able to accept his rent payment in January. More specifically, the Tenant stated that he went down to the office on January 4, 2022, to pay by debit, and the machine was not functioning correctly, and the payment was not processed. The Tenant stated he told the Landlord to follow up with him and tell him when the debit was working again, but he never heard back from the Landlord. The Tenant stated that he emailed the Landlord on January 10, 2022, stating he had issues trying to pay rent on January 4, 2022, but he stated he never heard back from the Landlord.

The Tenant stated that he didn't attempt to pay rent for February 2022, because he was not happy with how many times the Landlord had to enter his suite in mid-January.

The Tenant asserted that the Landlord altered the tenancy agreement by adding the initials of the third tenant throughout the agreement (who was named at the top of the agreement but did not sign the bottom of the agreement). The Tenant had no documentary evidence to support his allegations for this hearing. The Landlord stated

she has no idea what the Tenant is talking about, and she denies that the tenancy agreement was modified or altered in any way. The Landlord stated that all 3 Tenants initialled the tenancy agreement terms but it appears that only two of them actually signed the bottom of the agreement. The Landlord was under the impression that all 3 Tenants were and still are residing in the rental unit, and she was never told otherwise.

The Tenant stated that since the tenancy agreement has been altered by the Landlord, and because she forged one of the Tenant's initials, the entire agreement is null. The Tenant also stated that this means he does not have to comply with the term in the initial tenancy agreement specifying that rent must be paid by pre-authorized debit only. The Tenant stated that the Landlord altered the tenancy agreement in other ways as well, but he was not clear on what was altered. The Landlord stated she did not alter anything and feels the Tenant is playing games. The Landlord stated that all tenancy agreements are standard and are the same; they all contain the same term, that rent must be paid by pre-authorization only.

The Landlord provided a stopped payment report, showing that the Tenant stopped the pre-authorized debit payments as of November 2021.

### Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

First, I turn to the tenancy agreement provided into evidence. I note there are 3 Tenants names listed at the top of that tenancy agreement. However, I note only 2 of the 3 Tenants signed the bottom of the tenancy agreement. I find the Tenant who failed to sign the tenancy agreement, at the bottom, is not a formal Tenant, but rather an occupant/roommate, with no contractual relationship with the Landlord. I find there are only two Tenants under this tenancy agreement, and I have amended the style of cause on this decision and any related Orders to reflect the two tenants who were named on the agreement, and who signed the agreement.

I note the Tenant who was at the hearing asserted that the Landlord altered the tenancy agreement, and forged signatures/initials. However, I find the Tenant has not provided sufficient evidence that this occurred. Further, I found the Tenant's explanation as to

what was forged, and what the other potential versions of the tenancy agreement contained, was scattered, unclear, and unsupported by evidence. I note the Landlord denied making any such alterations, and asserts there was only ever the one tenancy agreement (provided into evidence) which is exactly the same as all the other tenancy agreements in the building, as it was a standardized corporate tenancy agreement.

When weighing these two versions of events, I find the Landlord's version of events was more clear and compelling, and as such, I have placed more weight on it with respect to the alleged tenancy agreement alterations. I find it more likely than not that the tenancy agreement provided into evidence was the original tenancy agreement, and its terms are still valid and enforceable. I find it more likely than not that the tenancy agreement has not been altered as the Tenant has asserted.

I find the first Notice was drafted and posted to the Tenants door on January 5, 2022. I find it was received by the Tenant on January 8, 2022, the day he acknowledged receipt of it and 3 days after it was posted to the door. The Notice indicated that \$1,550.00 was unpaid (January 2022 rent). As per the tenancy agreement, rent is due on the first of the month. I note the Tenant stated he tried to pay January rent on January 4, 2022, by debit in the Landlord's office, and there were issues with the debit machine. However, I also note the tenancy started in April of 2021, and the Tenants paid by pre-authorization for around 7 months, until November 2021, at which point the Tenant cancelled the pre-authorization arrangement, and began attending the office to pay by Interac debit.

I find the Tenant breached his tenancy agreement by cancelling or not fixing the issues with his pre-authorization in November. I accept that the Landlord has a debit machine for special circumstances and for emergencies. However, this is not a service the Landlord is required to provide. I also note the Landlord had numerous conversations with the Tenant about needing to restore pre-authorized payments when he personally attended the Landlord's office and paid rent by debit in November and December 2021. The Tenant did not refute this. I find the Tenant had ample opportunity to bring himself back into compliance with the tenancy agreement. However, he did not.

I find the Tenant was still required to pay in accordance with the terms of the tenancy agreement, which clearly states the following: "Rent to be paid by pre-authorized service only." It does not appear sufficient effort was put forth to pay in accordance with the tenancy agreement, particularly in light of the fact that the Tenant was told numerous times to fix the pre-authorized payment issue that appears to have come about after he cancelled his payment regime. I note the Landlord provided evidence to

show that the payments were “stopped/recalled” by the Tenant in the fall of 2021, and the Tenant did not refute this.

After receiving the Notice on January 8, 2022, the Tenant had 5 days to pay rent, in full, and in accordance with his tenancy agreement, by way of pre-authorized service. This was not done. Furthermore, the Tenant also acknowledged receiving the second Notice on February 2, 2022, for failing to pay February rent. The Tenant had 5 days to pay the outstanding February rent but the Tenant acknowledged that he made no attempt to pay for February, and did not make any payment until March 2022.

As rent has not been paid when due, for both January and February 2022, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent for either of these months, I find that the Tenant’s Application is dismissed. When a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the January and February 2022 Notices, I find they comply with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Landlord’s request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the Tenant owes and has failed to pay rent for the months of January and February 2022 (\$1,550.00 x 2). The Tenant acknowledged that no rent was paid for January or February and he referred to the fact that he withheld February rent. In any event, I am satisfied the Tenant owes rent for these two months, and the Landlord is entitled to recover these amounts in full.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$3,100.00

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Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$775.00)
<b>TOTAL:</b>	<b>\$2,425.00</b>

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### Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,425.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 11, 2022

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Residential Tenancy Branch