



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNRL, FFL  
Tenant: CNR, LRE, LAT, FFT  
CNL, FFT

### **Introduction**

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

The Tenant filed two applications for dispute resolution. The first of the Tenant's applications was made on April 26, 2022. In it, the Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 19, 2022 (the Two Month Notice);
- an order granting recovery of the filing fee.

The second application made by the Tenant was filed on May 2, 2022. In it, 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 April 29, 2022 (the April 10 Day Notice);
- an order suspending or setting conditions on the Landlords' right to enter the rental unit;
- an order permitting the Tenant to change the locks to the rental unit; and
- an order granting recovery of the filing fee.

The Landlords' Application for Dispute Resolution was filed on May 11, 2022. The Landlords applied for the following relief, pursuant to the Act:

- an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 1, 2022 (the May 10 Day Notice);
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing and were accompanied by GC, an advocate. The Tenant did not attend the hearing but was represented by AE, legal counsel. The Landlords and GC provided affirmed testimony.

### ***Preliminary Issue – Adjournment***

At the beginning of the hearing, AE requested an adjournment on behalf of the Tenant. AE advised that the Tenant has a new job as a heavy machinery operator and was unable to get the time off to attend the hearing. The Landlords opposed the adjournment request.

A non-exhaustive list of criteria to consider when granting an adjournment are set out in Rule of Procedure 7.9, which states:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

After considering the criteria set out above, I decline to grant an adjournment. First, counsel for the Tenant acknowledged that rent has not been paid for six of the past eight months as alleged. To adjourn the matter would prejudice the Landlords and put them at further risk of lost rent. Second, the Tenant's applications were made on April 22 and May 6, 2022. As a result, I find there has been sufficient time to appoint an agent to provide evidence on the Tenant's behalf.

The hearing proceeded in the Tenant's absence. Although the Tenant was not in attendance to provide evidence, AE was permitted to cross-examine the Landlords and make submissions on the Tenant's behalf.

### ***Severance***

Rule of Procedure 2.3 permits an arbitrator to dismiss unrelated claims made in an application with or without leave to reapply. In this case, I find that the most important issues to address are related to the payment of rent and whether or not the tenancy will continue. These issues are unrelated to the Tenant's requests for an order suspending or setting conditions on the Landlords' right to enter the rental unit and an order permitting the Tenant to change the locks to the rental unit. These issues were not considered during the hearing and, in light of my findings below, I find that these aspects of the Tenant's applications are dismissed without leave to reapply.

### ***Service***

On behalf of the Landlords, GC advised that the Notice of Dispute Resolution Proceeding and supporting evidence were served on the Tenant by registered mail. AE acknowledged receipt. No further issues were raised with respect to service or receipt of these documents during the hearing. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

As noted above, the Tenant did not attend the hearing to present evidence and make submissions.

Those in attendance were given an opportunity to present evidence orally and in written and documentary form and to make submissions to me, as appropriate. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Are the Landlords entitled to an order of possession?
2. Are the Landlords entitled to a monetary order for unpaid rent?
3. Are the Landlords entitled to recover the filing fee?
4. Is the Tenant entitled to an order cancelling the 10 Day Notices?
5. Is the Tenant entitled to an order cancelling the Two Month Notice?
6. Is the Tenant entitled to recover the filing fees paid to make the Tenant's applications?

### Background and Evidence

On behalf of the Landlords, GC advised that the tenancy began in or about 2009 but that the tenancy agreement was not reduced to writing until September 2021. The written tenancy agreement was effective October 1, 2021. Rent of \$700.00 per month is due on the first day of each month. The Tenant did not pay a security deposit or a pet damage deposit. AE, counsel for the Tenant did not disagree that these were the terms of the tenancy or question the Landlords about the terms of the tenancy agreement on cross-examination.

The Landlords maintain that the Tenant has not paid rent when due. Accordingly, the Landlords issued the April 10 Day Notice. NC testified that the April 10 Day Notice was served on the Tenant in person on April 29, 2022. NC testified that his wife and son were present. A copy of the April 10 Day Notice was submitted into evidence.

The Landlords also issued the May 10 Day Notice. NC confirmed the May 10 Day Notice was served on the Tenant by attaching a copy to the door of the rental unit on May 1, 2022.

The Tenant's applications acknowledge receipt of the April 10 Day Notice and the May 10 Day Notice. Both are signed and dated, give the address of the rental unit, state the effective date, state the grounds for ending the tenancy, and are in the approved form.

The Landlords testified that the Tenant did not pay rent when due on January 1, April 1, May 1, June 1, July 1, and August 1, 2022. The Landlords testified that rent of \$4,200.00 is currently outstanding.

On cross-examination by AE, NC denied there was a physical confrontation resulting in bruising to the Tenant when he served the April 10 Day Notice. Rather, NC testified that he saw the Tenant in the street and tried to serve him. When the Tenant appeared to refuse service, NC put a copy of the April 10 Day Notice in the Tenant's jacket pocket. NC testified that he contacted the RCMP and that the manner of service was a "non-issue".

Further, NC testified that for the past year, the Landlords have collected rent in cash at the rental unit at 12:00 noon on the first day of each month. NC testified that in January, April, and May 2022, one of the Landlords or their son attended the rental unit to collect rent, but that payments were not made on those occasions. NC acknowledged that in June, July, and August 2022, the Landlords did not go to the rental unit to collect rent because of promises of payment made by the Tenant.

NC also acknowledged that the Tenant attempted a payment by e-transfer. However, NC stated that the Landlords are not equipped to receive e-transfers, and that the Tenant cancelled the e-transfer 24 hours later in any event.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms:

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.

Section 46 of the Act confirms that a landlord may issue a notice to end tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. In this case, I find the May 10 Day Notice was issued as a follow-up to the April 10 Day Notice. I accept the testimony of NC who stated the April 10 Day Notice was served on the Tenant in person. I also note the Tenant's application acknowledges receipt of the April 10 Day Notice and a copy was submitted into evidence by the Tenant. Therefore, I accept that the April 10 Day Notice was served on and received by the Tenant.

Considering the evidence and submissions provided during the hearing, I find the Tenant did not pay rent in full within five days after receipt of the April 10 Day Notice in accordance with section 46(4) of the Act, or at all, and that rent of \$4,200.00 currently remains outstanding.

Further, I find there is insufficient evidence before me to conclude the Tenant had a right under the Act to withhold rent, or that the Landlords refused to accept rent when offered. Rather, I find it is more likely than not that the Tenant was either not available when the Landlords attended the rental unit to collect rent (as had become the practice between the parties), or the Tenant made promises of payment that were not fulfilled.

Considering the above, I find the Landlords have established an entitlement to an order of possession based on unpaid rent which will be effective two days after it is served on the Tenant.

In addition, I find the Landlords have established an entitlement to a monetary for unpaid rent of \$4,200.00 to August 31, 2022. Having been successful, the Landlords are also entitled to recover the \$100.00 filing fee paid to make the Landlords' application.

In light of my findings above, I find it is not necessary for me to consider the Tenant's application in which he requests an order cancelling the Two Month Notice and to recover the filing fee. This application is dismissed without leave to reapply.

### Conclusion

The Tenant's applications are dismissed without leave to reapply.

The Landlords are granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$4,300.00, which is comprised of \$4,200.00 in unpaid rent and \$100.00 in recovery of the filing fee. The monetary order 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: August 29, 2022

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Residential Tenancy Branch