



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes

Tenant: CNL

Landlord: OPR, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the parties' cross-applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied under section 49 of the Act to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2022 (the "Two Month Notice").

The Landlord applied under the Act for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022 (the "10 Day Notice") pursuant to section 55;
- a Monetary Order of \$100.00 for unpaid rent pursuant to section 55;
- a Monetary Order of \$100.00 for compensation for monetary loss or other money owed pursuant to section 67
- and to keep the Tenant's security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72.

The Tenant and the Landlord's agents NB and RB attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Dispute Address and Amendment of Parties

The parties' applications did not state the dispute address consistently. During the hearing, the parties agreed as to the correct unit description and address for the rental unit. Based on their testimonies, I have amended the dispute address accordingly.

The Landlord's application initially named the Tenant and another individual KS as respondents.

The Tenant's application named the Landlord and NB as respondents. NB is the Landlord's son and had signed the Two Month Notice and the 10 Day Notice as the Landlord's agent.

The parties agreed that originally there was a tenancy agreement between the Landlord and KS signed in 2010. The Tenant stated that he did not have a copy of the agreement but should have signed it too. NB stated the Tenant did not sign a copy of the original agreement but had moved in with KS. According the Tenant, he had resided with KS in the rental unit for over 11 years as roommates, and by himself since September 2021. The Tenant stated that KS moved out of the rental unit in October 2021 and told the Tenant that he is solely responsible for the rent. The Tenant signed a statement of tenancy dated August 3, 2022.

The Landlord submitted a text message from KS dated May 27, 2022 indicating that she was moving out by July 31, 2022. NB explained that KS had been traveling back and forth and staying away with family for months, so the Landlord was unsure whether KS was moving out. NB stated they were under the assumption that both were moving out, but the Tenant stayed. NB stated that after a month, it didn't seem like the Tenant was moving out, so the Landlord issued the Two Month Notice.

Based on the parties' testimonies, I find it is not disputed that the Landlord had a written tenancy agreement with KS. I find there is insufficient evidence that the Tenant was also a party to this agreement. I find the Landlord understood and accepted that KS was moving out in July 2022. I find the Landlord's original tenancy with KS ended when she moved out. I find the Landlord allowed the Tenant to stay in the rental unit, and by doing so, I find the Landlord to have entered into a new implied tenancy with the Tenant on the same terms. In addition, I find NB takes the position that he is acting solely as the Landlord's agent. I do not find NB to be a party to any agreement with the Tenant.

Therefore, pursuant to section 64(3)(c) of the Act, I have unified the styles of cause on both applications to include only the Landlord and the Tenant as parties, and have removed KS and NB.

#### Preliminary Matter – Service of Dispute Resolution Documents

NB and RB acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "Tenant's Documents"). I find the Landlord was served with the Tenant's Documents in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "Landlord's Documents"). I find the Tenant was served with the Landlord's Documents in accordance with sections 88 and 89 of the Act.

#### Preliminary Matter – Clarification of the Landlord's Claims

The Landlord's application includes claims to retain the security deposit. During the hearing, the parties agreed that the \$500.00 security deposit paid at the start of the tenancy was used to cover rent at one point during the tenancy. I find the Landlord is not holding any security deposit in trust for the Tenant, and therefore it is not necessary for me to consider those security deposit-related claims.

Based on the Landlord's application, I find the Landlord's claim of \$100.00 for monetary loss or other money owed is a duplicated request for reimbursement of the filing fee. Therefore, I find it is not necessary for me to consider this claim and I dismiss it without leave to re-apply.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession under the 10 Day Notice?
2. Is the Tenant entitled to cancel the Two Month Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?
4. Is the Landlord entitled to reimbursement of the filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced in 2010 and is month-to-month. Rent is \$1,000.00 due on the first day of each month. The Landlord does not hold any security deposit in trust for the Tenant.

A copy of the Two Month Notice has been submitted into evidence. It has an effective date of November 30, 2022 and states that the child of the landlord or landlord's spouse will occupy the rental unit.

NB and RB confirmed that their father, the Landlord, owns the rental property jointly with their mother. They confirmed that their brother was moving back into the rental unit from another city.

NB stated that his brother had planned to move back into town since before the pandemic and the Tenant had been notified. NB stated his brother already moved back and is paying \$2,500.00 to rent a place for his family. RB explained that their parents, who live in the suite above the rental unit, also want their son to move back and to be closer to the grandchildren.

The Tenant confirmed he was told that the Landlord's son would be moving in. The Tenant stated that the Landlord has been saying for years that they could get more money for the rental unit. The Tenant stated that he was told the Landlord would be selling the property and that the Tenant had two months to move. The Tenant stated that he was experiencing health issues and needed more time to find a new place.

RB acknowledged that the Landlord had listed the property for sale during the pandemic, as their family wanted to be together whether in this property or another property. RB acknowledged that there was a verbal agreement to sell the property which did not go through. RB stated that the property was later de-listed as the Landlord did not get the desired price.

A copy of the 10 Day Notice has also been submitted into evidence. It has an effective date of December 12, 2022 and states that the Tenant failed to pay \$100.00 in rent due on December 1, 2022. NB testified that a copy of the 10 Day Notice was given to the Tenant in person on December 2, 2022. The Landlord submitted a signed and witnessed proof of service in support.

The Tenant stated that he paid \$900.00 first and told NB that he will have the rest in a few days. The Tenant stated he was going out of town, so he phoned NB to tell him to come pick up the money. The Tenant stated that he had people over and no one knocked on the door that day. The Tenant stated that a few days after he returned from out of town, he paid NB the remaining \$100.00 on December 15, 2022. The Tenant stated that there was a “miscommunication” about who was picking up the rent.

Records of the Residential Tenancy Branch indicate that the Landlord’s application was submitted on December 14, 2022. NB confirmed the Landlord is seeking an Order of Possession under the 10 Day Notice. NB stated that the Tenant has been late with rent many times, which the Tenant denied.

### Analysis

#### *1. Is the Landlord entitled to an Order of Possession under the 10 Day Notice?*

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 states:

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the 10 Day Notice and that it complies with the requirements of section 52 in form and content.

Based on the Landlord's evidence, I find the Tenant was served with a copy of the 10 Day Notice in person on December 2, 2022, in accordance with section 88(a) of the Act.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent, or pay the outstanding rent in full, within 5 days after receiving such notice. I find the Tenant did not apply to dispute the 10 Day Notice or pay the outstanding rent in full by December 7, 2022. I find the Tenant paid the overdue rent on December 15, 2022, which is past the deadline required by section 46(4) in order to cancel the 10 Day Notice.

Section 46(5) of the Act states that if a tenant who has received a notice under section 46 does not pay the rent or make an application for dispute resolution in accordance with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

**Order of possession for the landlord**

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,
- (a) grant an order of possession, and
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the 10 Day Notice was served on December 2, 2022, the time for disputing the 10 Day Notice or paying the overdue rent expired on December 7, 2022, and the Tenant did not make an application for dispute resolution or pay the overdue rent by that date. Accordingly, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, or December 12, 2022.

The effective date of the 10 Day Notice as already passed. Pursuant to section 55(4)(a) of the Act, I grant the Landlord an Order of Possession effective two days after service upon the Tenant.

*2. Is the Tenant entitled to cancel the Two Month Notice?*

As I have determined above that the Landlord is entitled to an Order of Possession under the 10 Day Notice, I find the Tenant's application to dispute the Two Month Notice to be moot. I dismiss the Tenant's application without leave to re-apply.

*3. Is the Landlord entitled to a Monetary Order for unpaid rent?*

I find the Tenant paid the \$100.00 rent arrear on December 15, 2022. I find the Tenant does not owe the Landlord any other unpaid rent and therefore it is not necessary to grant the Landlord an order for unpaid rent under section 55(4)(b) of the Act. The Landlord's claim under this part is dismissed without leave to re-apply.

*4. Is the Landlord entitled to reimbursement of the filing fee?*

The Landlord has been successful in obtaining an Order of Possession under the 10 Day Notice. I award the Landlord reimbursement of his filing fee under section 72(1) of the Act.

### Conclusion

The Tenant is conclusively presumed to have accepted that the tenancy ended on December 12, 2022 under the 10 Day Notice.

Pursuant to section 55(4) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(1) of the Act, I grant the Landlord a Monetary Order in the amount of **\$100.00** for reimbursement of the Landlord's filing fee. This Order may be served on the Tenant, filed in the Provincial Court of British Columbia, and enforced as an Order of that Court.

The Tenant's application to dispute the Two Month Notice and the Landlord's claims regarding the security deposit, the duplicate filing fee, and unpaid rent are moot and dismissed without leave to re-apply.

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: February 28, 2023

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Residential Tenancy Branch