



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC, FFT  
  
OPR-DR, MNR-DR

### Introduction

On March 12, 2023, the tenant applied for (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”); (ii) compensation for monetary loss or other money owed under section 67 of the Act; (iii) an order for the landlord to comply with the Act under section 62 of the Act; and (iv) authorization to recover the cost of the filing fee under section 72 of the Act.

By way of cross-application, on March 13, 2023, the landlord applied for (i) an order of possession on the Notice under section 55(2)(b) of the Act; and (ii) a monetary order for unpaid rent under section 26(1) of the Act.

### Preliminary Issue - Unrelated Claims

*Rules of Procedure* 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the landlord’s and tenant’s claim regarding the Notice, monetary order for unpaid rent, and the recovery of the filing fee is not sufficiently related to the tenant’s other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claims with leave to reapply and will deal only with the issues relating to the Notice, monetary order for unpaid rent, and the recovery of the filing fee.

### Preliminary Issue – Partial Settlement

At the hearing, both parties agreed to the following binding settlement for the application for an order of possession and an order cancelling the Notice.

1. The Notice is cancelled and of no force or effect; and
2. The parties agree that the tenancy will end at 12:00 P.M. on April 22, 2023 by mutual agreement. An order of possession is awarded to the landlord for this date, a copy of which is attached to this Decision and must be served on the tenant.

### Preliminary Issue – Service of Documents

The tenant and the landlord both affirmed that they did not serve each other with their respective documentary evidence. Therefore, all documentary evidence submitted by the parties are excluded under section 3.13 and 3.15 of the Rules of Procedure. This decision is based only on the oral testimony of the parties provided during the hearing.

### Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation for unpaid rent?
2. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant oral evidence that complied with the *Rules of Procedure*. Only the necessary oral evidence that helped resolve the issue of the dispute and explain the decision is included below.

The tenancy began October 1, 2022 and will end at 12:00 P.M. on April 22, 2023. Monthly rent is \$2,400.00 due on the first day of the month. The landlord currently retains a \$1,200.00 security deposit pending the outcome of this application.

The landlord affirmed that:

- the tenant has not paid any rent starting from January 2023 and currently has rental arrears of \$7,200.00.
- the tenant is the landlord's contractor and, soon after issuing the Notice to the tenant, the landlord suddenly received multiple invoices from the tenant claiming that the landlord owes the tenant money, which the landlord denies.

- the tenant has never told the landlord that the tenant was setting off rent from other monies that the landlord allegedly owes the tenant, even when the landlord chased the tenant for rent.
- the landlord never agreed to the tenant withholding rent.

The tenant affirmed that:

- the tenant has not paid the rent starting January 2023 because the tenant is the landlord's contractor and the landlord owes the tenant for work done as a contractor. The tenant claimed there is an agreement between the landlord and tenant for this.
- the landlord asked the tenant to take money off their contracting contract to continue staying at the rental unit.
- the tenant decided that the tenant would not be paying the landlord any rent until the landlord pays the money the landlord owes the tenant from their business relationship.

### Analysis

Section 26(1) of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. The landlord's position is that the tenant owes \$7,200.00 in unpaid rent and there was never any agreement for the tenant to withhold rent. The tenant's position is that the landlord had agreed to allow the tenant to withhold rent to set-off money that is owed by the landlord from their business relationship.

A useful guide regarding conflicting testimony, and frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Taking into consideration all of the oral evidence before me, I find the landlord's submissions to be more reasonable for the following reasons:

- The landlord affirmed that the tenant never informed the landlord that the tenant was setting off rent from other monies that the landlord allegedly owes, even when the landlord chased the tenant for rent. The tenant did not deny this. If the tenant actually intended to set off rent with amounts owed by the landlord from their business relationship, it would be reasonable to inform the landlord of this intention.
- The landlord affirmed that, soon after issuing the Notice to the tenant, the landlord suddenly received multiple invoices from the tenant claiming that the landlord owes him money. The tenant did not deny this sequence of events. If the invoices are valid, it would be reasonable for the tenant to be issuing these as they arise as opposed to all in quick succession following the serving of the Notice.
- The tenant admitted that the tenant would not be paying the landlord any rent until the landlord pays the money the landlord owes the tenant from their business relationship. If the tenant truly believed that the landlord and the tenant had an agreement allowing the tenant to withhold rent to set-off other monies owed by the landlord, it would be reasonable for the tenant to just state that he is setting off the rent as opposed to stating that he would pay the rent only if the landlord pays him for monies owed from their business relationship.

For the reasons stated above, I find it is more likely than not that the landlord did not agree to allow the tenant to withhold rent to compensate the tenant for contractor services. Therefore, I find that the tenant did not pay the rent as required under section 26(1) of the Act.

Pursuant to section 67 of the Act, I find that the landlord suffered a monetary loss of \$7,200.00 due to the tenant's failure to pay rent, and order that the tenant pay \$7,200.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,200.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$6,000.00 is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is awarded a monetary order in the amount of \$6,000.00.

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 20, 2023

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Residential Tenancy Branch