



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES  
LIMITED and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, FFT  
                             OPR, OPC, FFL

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on September 29, 2023 concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for an order of possession for unpaid rent or utilities; an order of possession for cause; and to recover the filing fee from the tenant.

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call during that time. The tenant attended the hearing at 9:50 a.m., during the testimony of the landlord's agent. The tenant also gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The tenant uploaded a lot of evidentiary material to the Residential Tenancy Branch site the morning of the hearing, but did not provide any of it to the landlord. Any evidence that a party wishes to rely on must be provided to the other party. Further, an applicant must upload and provide that evidence to the respondent no less than 14 days prior to the hearing. Since the tenant has not done so, I decline to consider the late evidence.

The landlord advised that the tenant was provided with the landlord's evidence by registered mail on September 14, 2023 and has provided a copy of a Canada Post Registered Domestic Customer Receipt stamped with that date. Therefore, all evidence of the landlord is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated May 17, 2023 was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled
- Has the landlord established that the One Month Notice to End Tenancy For Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on November 1, 2020 and reverted to a month-to-month tenancy after October 31, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$2,400.00 was payable on the 1<sup>st</sup> day of each month, which was increased over time to \$2,484.72 effective March 1, 2023, and there are no rental arrears. On October 23, 2020 the landlord collected a security deposit from the tenant in the amount of \$1,200.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment on the 6th floor of a 7-storey building. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on May 17, 2023 the tenant was served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, by attaching it to the door of the rental unit. A copy of the Notice has been provided for this hearing, and it is dated May 17, 2023 and contains an effective date of vacancy of May 31, 2023 for unpaid rent in the amount of \$784.72 that was due on May 1, 2023. The landlord's agent testified that the tenant paid a portion of \$1,700.00 on May 6, 2023 and the balance of \$834.72 on May 26, 2023, not within 5 days of service of the Notice.

On June 28, 2023 an agent of the landlord served the tenant personally with a One Month Notice to End Tenancy For Cause, and a copy has been provided for this hearing. It is dated June 28, 2023 and contains an effective date of vacancy of July 31, 2023. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

A copy of a tenant ledger has been provided for this hearing. The landlord's agent testified that the tenant was late with rent more than 3 times in a year. Rent due on August 1, 2022 was paid on the 7<sup>th</sup> of the month; rent due on March 1, 2023 was returned N.S.F. and the tenant paid \$2,200.00 on March 10 with a balance of \$334.72 including late fees and N.S.F. fees; rent due for May, 2023 was also returned N.S.F. and the tenant paid \$1,700.00 on May 6 and the balance of \$834.72 on May 26, 2023. The tenant ledger indicates that the landlord charged \$25.00 for each late payment as well as an N.S.F. fee.

There have also been multiple incidents. The first involved a window cleaner that the landlord had hired. The landlord's agent assumes that the window cleaner knocked over a planter. The tenant came out shouting and threatened to cut the ropes. As per their policy, the cleaners stopped right away and called police. The landlord's agent takes the position that the window cleaners hired by the landlord qualify as a "landlord."

Also, the tenant believed someone was affecting the tenant's internet service and had confrontations with other residents of the building, and police have had to attend on a few occasions. Residents are fearful not knowing what the tenant is capable of.

With respect to the breach of a material term of the tenancy agreement, the landlord's agent testified that multiple tenants have complained about the tenant smoking inside the rental unit. The building manager witnessed that, and the tenant admitted that he enjoys smoking on the balcony, however the tenant was smoking inside and on the balcony. A letter regarding the breach was provided to the tenant on June 2, 2023.

**The tenant** testified that he and his son enjoy the area.

The landlord's agent has spoken to other residents about the tenant and his financial status, which is harassing. The tenant overheard conversations while sitting by the window. This is not a 1-time deal, but has gone on for quite a long time.

The tenant does not know why neighbours would be afraid. The window cleaners kicked over a flower pot hard, a direct kick. The tenant asked if it was the fellow's first day, and he confirmed that it was, but didn't apologize. Then police were at the door. The tenant did not say he would cut the lines.

With respect to smoking, the tenant was told that buildings are in transition to non-smoking and it was suggested that the balcony would be a good place to smoke. Then the tenant changed to water-based vaping, but not inside the rental unit.

### Analysis

Firstly, a tenant must pay rent when it is due even if the landlord fails to comply with the *Residential Tenancy Act* or the tenancy agreement.

In this case, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued on May 17, 2023 by attaching it to the door of the rental unit, which is deemed to have been served 3 days later, or May 20, 2023. If a tenant pays the rent in full within 5 days, the Notice is of no effect. I accept the undisputed testimony of the landlord's agent that the tenant paid the outstanding rent in full on May 26, 2023, which is not within 5 days. Therefore, I find that the landlord is entitled to an order of possession. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant, and I dismiss the tenant's application to cancel it. The tenant must be served with the order of possession, which may be filed in the Supreme Court of British Columbia for enforcement.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement. Since the tenant has not been successful with the application, the tenant is not entitled to recover the filing fee from the landlord.

With respect to the One Month Notice to End Tenancy For Cause, the tenant has not applied to cancel it. Also, since the tenancy is ending, it is not necessary for me to decide on another Notice. However, the landlord testified that the window cleaners are agents of the landlord. The *Residential Tenancy Act* defines a landlord as follows:

**"landlord"**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenant. I grant a monetary order in favour of the landlord as against the tenant in that amount, and I order that the landlord be permitted to keep that amount from the security deposit, or may serve the order upon the tenant and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* and I order that the landlord may keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

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: October 03, 2023

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Residential Tenancy Branch