



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, RR, RP, LRE, LAT, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order permitting the tenant to change the locks to the rental unit;
- 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 tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I alerted the parties to the Rules of Procedure, which require that multiple applications contained in a single application must be related. I found that the primary application is with respect to a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, and the hearing focused on that portion of the tenant's application.

Both parties have provided evidence to the Residential Tenancy Branch portal well after the time limit had expired. Almost all of the tenant's evidence was uploaded to the Residential Tenancy Branch portal on October 3, 2023, which is not within the time

required for an applicant. The landlord filed copious amounts of evidence within the time required and another huge submission on September 29, 2023, also not within the time required for a respondent. The landlord submitted that he served the late evidence on October 3, 2023 by leaving it on the porch because the tenant refused to answer the door. The tenant submitted that the tenant's evidence was served by email to the landlord on July 30, 2023, which was consented to as an acceptable method of service. I accept that it was provided, but neither of the parties have done so within the time required. Neither party opposed inclusion of the other party's evidence, and only the evidence related to the notice to end the tenancy 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 was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on October 1, 2022 and reverted to a month-to-month tenancy after October 1, 2023, and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 is payable on the 1<sup>st</sup> day of each month. On October 1, 2022 the landlord collected a security deposit from the tenant in the amount of \$550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom mobile trailer in a manufactured home park. The landlord does not reside there, but pays pad rent, and rents the trailer to the tenant. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$12,100.00 for 12 months, less \$200.00 for dispute fees. The landlord waived the rent for the month of October, 2023, so the tenant owes for 11 months total, or \$11,900.00.

The landlord personally served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities and a copy has been provided by the tenant for this hearing. It is dated July 26, 2023 and contains an effective date of vacancy of August 5, 2023 for unpaid rent in the amount of "\$1100 x 9 = 9900" that was due on July 27, 2023.

In December, 2022 and in January, 2023 the landlord served 10 Day Notices and the tenant disputed them. The Arbitrator said that the rental unit had to be inhabitable and cancelled the notices. On February 23, 2023 the landlord served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property indicating that the rental

unit will be occupied by the landlord. The tenant disputed it, and the Notice was cancelled. The parties haven't had much communication between February and July, 2023. In the last hearing the landlord stated that the furnace was repaired, not replaced; the shower needed an adjustment but still works, and the toilet had a minor issue which was addressed. The earliest the landlord could get a contractor was in December. On December 22 the contractor said they would not go to the rental unit with the tenant there, not feeling safe. They will only talk on the phone, not by text, email or letter.

**The tenant** testified that she had to stay at her daughter's house because the plumbing and heating in the rental unit don't work. The landlord was in and out in December and said it was best that the parties part ways. Nothing was accomplished. The landlord told the tenant verbally to not pay rent, then wanted the tenant to go away because he decided he didn't want to do repairs. The landlord was angry because the tenant didn't leave, and started to give notices to end the tenancy. The landlord's idea of compensation was for the tenant to leave. The tenant was told by the landlord to make other arrangements, refusing to do anything.

The tenant has some belongings at the rental unit, but never thought it would go on this long. The landlord has gone back on his word, uses eviction tactics and has not complied with orders. There has been no progress at all.

The tenant has provided a copy of a Residential Tenancy Branch Decision dated September 6, 2023 as evidence for this hearing. It shows that the hearing was held on August 31, 2023 and dealt with the tenant's application for an order that the landlord make emergency repairs for health or safety reasons and to recover the filing fee from the landlord. The Decision orders the landlord to retain the services of a licensed tradesperson to inspect and, as required, repair the furnace, shower, the plumbing, stairs, and roof, in a manner that complies with sections 32 and 33 of the Act. It also orders the landlord to provide at least 24 hour's written notice, and that the tenant not interfere with any repairs. The repairs were ordered to be commenced on or before September 20, 2023, and that the landlord provide written confirmation from a licensed contractor to the tenant to support that the repairs are not required or have been completed.

Another hearing was scheduled for July 27, 2023 but a copy of the resulting Decision has not been provided for this hearing.

## Analysis

Although I don't see in the September 6, 2023 Decision any reference to advising that the rental unit has to be inhabitable, I agree that it must be. The Decision also sets out the obligations of the landlord under Sections 32 and 33 of the *Act*.

However, that Decision dealt only with the tenant's application for an order that the landlord make repairs, and had nothing to do with unpaid rent. The *Residential Tenancy Act* also states that a tenant must pay rent when it is due under the tenancy agreement even if the landlord fails to comply with the *Act* or the tenancy agreement.

I have reviewed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) and I find that it is in the approved form and contains information required by the *Act*. Where a tenant disputes such a Notice, the onus is on the landlord to establish that it was given in accordance with the law. The tenant does not dispute that rent hasn't been paid. Once a tenant is served with the Notice, the tenant must dispute it within 5 days or pay the rent in full within that 5 day period. In this case, I find that the tenant disputed it within 5 days but has not paid the rent. Therefore, I dismiss the tenant's application to cancel the Notice.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end the tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long that the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant.

The law also states that if the tenant's application to dispute a Notice is related to unpaid rent, I must grant an order requiring the payment of the unpaid rent. Therefore, I grant a monetary order in favour of the landlord as against the tenant for the unpaid rent. The landlord testified that the tenant owes 12 months' rent, less \$200.00 for previous dispute fees, for a total of \$11,900.00. According to my arithmetic that would amount to \$13,200.00 for unpaid rent, less \$200.00 is \$13,000.00. The 10 Day Notice states that the tenant owed \$9,900.00 that was due on July 27, 2023, and the landlord testified that November to July is 9 months or \$9,900.00. Adding August and September, 2023 is an additional \$2,200.00, or \$15,200.00. The landlord also testified that the landlord waived rent for October, 2023 and then said that rent for October, 2022 was waived. Since the landlord has not been clear in his testimony, I find that the landlord has established a claim for unpaid rent in the amount of \$13,200.00, and I set

off that amount from the \$200.00 that the landlord was ordered to repay the tenant. I grant a monetary order in favour of the landlord as against the tenant for the difference in the sum of \$13,000.00.

The tenant must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since the tenant has not been successful with the application the tenant is not entitled to recover the filing fee from the landlord.

The balance of the tenant's application is hereby dismissed with leave to reapply.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed 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 further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$13,000.00.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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 12, 2023

---

Residential Tenancy Branch