



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FFL, CNR, ERP, LAT, LRE, MT, OLC, RP

### Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the Residential Tenancy Act (the “Act”).

The tenant named the corporate landlord DHA in their application and applied for:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the 10 Day Notice pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;

The corporate landlord RLOR applied for:

- An order of possession pursuant to section 55;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord’s agent DL (the “landlord”) confirmed he represented both named corporate landlords.

As both parties were present service of documents was confirmed. The tenant testified that they had received the landlord’s 10 Day Notice dated April 11, 2018, the landlord’s application package and evidence. The landlord confirmed receipt of the tenant’s application materials. The tenant testified that she has not served any evidence. Based

on the undisputed evidence of the parties I find that the materials were duly served on the respective parties in accordance with sections 88 and 89 of the *Act*.

#### Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant claimed that she suffers from a hearing disability and requested that the hearing be adjourned to a face-to-face hearing at a later date. Residential Tenancy Rule of Procedure 6.4 provides that a party may make an application in writing for a hearing to be held in a format other than a telephone conference call within three days of the Notice of Dispute Resolution Proceeding being made available. While the tenant said that she made an application and referenced other documentary evidence, no documents were submitted into evidence. The Residential Tenancy Branch records show that the tenant did not make an application for the hearing to be conducted in a manner other than a conference call despite being informed of the timeline for making such a request.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- 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.

I find that there is little evidence that there would be prejudice to the tenant to proceed with a hearing. The tenant claimed hearing impairment but was able to respond to questions and present oral evidence. There is no documentary evidence or information in support of the tenant's claim that they have a disability. The tenant has failed to submit any medical information in support of their claim. While the tenant said that she submitted a medical note at some point in the past, the records show that nothing was received by the Branch. The Branch records show that the tenant was advised of the timeline for making an application but took no action. Based on the evidence, I find that the tenant has not taken any steps towards making an application for the hearing to be conducted in an alternate format.

As such, I dismiss the tenant's oral application to have the hearing adjourned and reconvened as a face-to-face hearing. Under the circumstances, I find that the tenant has not met the criteria established for granting an adjournment. I find that the tenant has failed to provide documentary evidence in support of their request for an adjournment, that there is little prejudice to proceed with a teleconference hearing, and that the tenant's request arises from their failure to file a competed request within the required timeframe.

#### Issue(s) to be Decided

Is the tenant entitled to more time to file the application to dispute the landlord's 10 Day Notice? Should the 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Should the landlords be ordered to make repairs to the rental unit?

Should conditions be set on the landlord's right to enter the rental unit?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Are the landlords entitled to recover the filing fee for their application from the tenant?

#### Background and Evidence

The parties agreed on the following facts. This tenancy began in April, 2017. The monthly rent is \$1,000.00 payable on the first of each month. The tenant is also responsible for paying a portion of the utilities.

The landlord gave undisputed testimony that there was an arrear of \$5,200.00 for rent and \$776.06 for unpaid utilities as of April 11, 2018. The landlord issued a 10 Day Notice on that date and served it on the tenant by posting on the rental unit door in the presence of a witness. Copies of the 10 Day Notice and the signed Proof of Service form were submitted into evidence. The tenant confirmed she was served with the 10 Day Notice. The tenant filed an application for dispute resolution on April 25, 2018.

The tenant said she suffers from disabilities and implied that those disabilities delayed her in filing a response to the 10 Day Notice. The tenant testified about various complaints she had with the tenancy. The tenant said that she has attempted to make rental payment which the landlord has refused. The tenant mentioned several incidents where the police were called to the property and concerns she has with the safety of the suite. The tenant mentioned that she had never met the landlord's agent who was present at the hearing. The tenant did not submit any written evidence in support of her claim. The tenant said that she attempted to submit evidence to the Branch a few days

prior to the hearing but was told she was out of time. The tenant did not serve the landlord with any evidentiary materials..

The landlord seeks a monetary award in the amount of \$5,200.00 for unpaid rent. They did not include a claim for the unpaid utilities in their application.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

The tenant testified that she suffers from various disabilities both physical and mental which prevented her from filing the application in response to the 10 Day Notice within the statutory time limit. The tenant provided no documentary evidence in support of her claims and provided little details in her testimony. I find that the tenant’s gave no indication that there were exceptional circumstances that would give rise to an extension of time. There is little evidence that the tenant suffers from a disability, and even if this were true there is no indication that the disability prevented them from filing their application within the appropriate timeframe. I find that there is no evidentiary basis for finding that the tenant is entitled to an extension of time. Consequently, I dismiss this portion of the tenant’s application.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice.

In the present case the landlord posted the 10 Day Notice on the rental unit door on April 11, 2018. Therefore, pursuant to section 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served on the tenant on April 14, 2018, three days after posting. The tenant had five days from April 14, 2018 to either pay the overdue rent or file an application. The tenant filed their application on April 25, 2018, outside of the timeframe. I have found that there are no exceptional circumstances that would extend the timeframe allowable under the *Act*.

Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10

Day Notice, April 24, 2018. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the parties' undisputed evidence that rent for this tenancy is \$1,000.00 monthly. I accept the undisputed evidence that this tenancy is in arrears by \$5,200.00. Accordingly, I issue a monetary award for unpaid rent owing of \$5,200.00 as at June 25, 2018, the date of the hearing, pursuant to section 67 of the *Act*.

As I have found that this tenancy is ending it is unnecessary to make a finding on the portions of the tenant's application seeking relief regarding a continuing tenancy.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$500.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$4,800.00. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 26, 2018

---

Residential Tenancy Branch