



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or the tenancy agreement.

The Landlord and Tenant were both present for the duration of the teleconference hearing. The parties did not bring up any issues with service of the Notice of Dispute Resolution Proceeding package or the exchange of evidence. However, during the hearing it became clear that the parties had evidence before them that was not submitted to the Residential Tenancy Branch prior to the hearing.

The Tenant claimed she submitted documents into evidence that she uploaded through the online system. However, she noted that she completed this on public internet on her cell phone, and therefore it may not have uploaded correctly. As both parties had this evidence before them, I accepted verbal testimony on the evidence.

The Landlord submitted an amendment to change the amount of rent owing. However, it was explained during the hearing that the only matters before me were those on the Tenant’s Application for Dispute Resolution. Both parties are at liberty to file an Application for Dispute Resolution if they believe there are additional claims to be heard.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation* or the tenancy agreement?

### Background and Evidence

The parties were in agreement that the tenancy began on April 22, 2018 and monthly rent is \$2,300.00 due on the first day of each month.

The Tenant stated that she paid \$500.00 for a security deposit at the outset of the tenancy, while the Landlord testified that the security deposit was \$1,150.00, but the Tenant paid \$500.00, with a promise to pay the remainder in May 2018.

The Tenant testified that the security deposit was reduced to \$1,000.00 due to cleaning that was required when she moved in, but stated that she paid \$500.00.

The Landlord provided testimony that rent for May 2018 was not paid when due, although the Tenant advised the Landlord that she would pay as soon as she could. The Landlord stated that he received \$1,100.00 for May 2018 rent, which left an amount of \$1,200.00 outstanding.

The Landlord further testified that he received rent for June 2018. On July 2, 2018, the Landlord went to the rental unit to collect rent and the Tenant did not have the rent money. The Tenant offered to pay the rent to the tenant residing in the lower suite, who would then give it to the Landlord. The Landlord stated that he agreed to this situation and he eventually received a cheque from the tenant in the lower suite. However, he stated that the cheque bounced, so he never received July rent from the Tenant.

The Landlord stated that August 2018 rent was paid on August 2, 2018, but that September 2018 rent remains outstanding. The Landlord also noted that a utility bill for the rental unit has not been paid.

On August 11, 2018, the Landlord sent the Tenant a 10 Day Notice by registered mail. The 10 Day Notice, dated August 10, 2018, states that \$1,200.00 in rent was outstanding from May 2018 and \$2,300.00 from July 2018. The 10 Day Notice submitted into evidence states the effective end of tenancy date as August 22, 2018.

The Tenant testified that she received the 10 Day Notice by mail on August 16 or August 17, 2018. She agreed that \$1,200.00 was not paid for May 2018 rent, but stated that as there were issues with the rental unit when she moved in, she spent over \$1,200.00 in repairs and expenses. She stated that the Landlord agreed to not charge the Tenant the remaining \$1,200.00 for May 2018 due to the expenses incurred.

The Tenant stated that she submitted the invoice for her expenses into evidence and noted that it was signed by the Landlord. This invoice was not in the evidence submitted to the Residential Tenancy Branch. The Tenant testified that her expenses included plumbing and laundry issues that required them to shower at the local pool and complete laundry elsewhere. She also stated that she had to rent a car to remove garbage left in the home by the previous tenants, fix holes in the fence in the backyard and put up a partition between the floors in the home.

The Landlord testified that it was not an invoice, but an itemized list of expenses incurred by the Tenant, with no original receipts provided. The Landlord stated that he did not sign this paper, nor did he agree to accept alternative payments for the rent owing. The Landlord also questioned that the amount noted on the paperwork was almost exactly \$1,200.00 and also that it was provided to him in August 2018, despite the \$1,200.00 being due in May 2018.

The Landlord stated that any work completed at the rental property was not approved by him and instead was something the Tenant chose to do on her own.

The Tenant testified that the Landlord told her that the downstairs tenant could accept the rent payment for July 2018 and stated that she had a receipt signed by the downstairs tenant and by a witness. She agreed that August 2018 rent was paid and stated that September 2018 rent was not paid as she had the cash in her purse and it fell out.

The Tenant further testified that there are many problems in the home that she is concerned about, particularly mould in the home that is causing her and her children to feel sick. She stated that she does not feel she should have to pay rent to live in such poor conditions.

The Tenant testified that she offered to make a payment plan with the Landlord to pay off the amount owing, but that the Landlord declined. The parties discussed a possible settlement agreement during the hearing but were unable to come to an agreement.

The Tenant stated that her request for the Landlord to comply was related to concerns with mould in the home and also that the Landlord was renting out the garage, which was supposed to be included in her tenancy agreement. The tenancy agreement was not submitted into evidence.

### Analysis

Due to insufficient evidence to establish that mould is a concern in the home, that the Landlord has been notified of the issue and has not responded, or that the garage is part of the tenancy agreement and the Tenant has not been allowed access, I dismiss the Tenant's claim for an Order for the Landlord to comply, with leave to reapply. I find that I do not have enough evidence before me to make a decision on this claim of the Tenant.

As for the Tenant's application to cancel the 10 Day Notice, I refer to Section 46(1) of the *Act* which states the following:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As both parties were in agreement that \$1,200.00 in rent from May 2018 was not paid, I find that when the Landlord issued the 10 Day Notice, dated August 10, 2018, there was an amount of rent owing.

However, I note that I do not find sufficient evidence before me to confirm that rent for July 2018 was owing, due to the conflicting testimony of the parties regarding who is responsible for the rent not being provided to the Landlord.

Regardless of rent for July 2018, the parties were in agreement that a rent amount of \$1,200.00 was not paid for May 2018. While the Tenant stated that the Landlord accepted her list of expenses incurred from the outset of the tenancy in lieu of rent, the Landlord was not in agreement.

I find it reasonable that the Landlord would not accept alternative payment instead of rent as I note that Section 26(1) requires rent to be paid as it is due as per the tenancy agreement.

Despite the Tenant's claims regarding reasons for non-payment of rent due to the condition of the home, I find that rent is due on the first day of the month in the amount of \$2,300.00. The parties were in agreement that rent for September 2018 was not paid.

Section 46(4) provides 5 days for the Tenant to dispute the 10 Day Notice or pay the rent owing. I have no evidence before me that the Tenant paid the outstanding rent within 5 days of receiving the 10 Day Notice.

However, as the Tenant testified as to receiving the 10 Day Notice on August 16 or 17, 2018, and she applied for Dispute Resolution on August 21, 2018, I find that she applied within the 5 days allowable under the *Act*.

As I find that there was an amount of rent outstanding on August 10, 2018 when the 10 Day Notice was issued, and I do not find that the Tenant paid the rent outstanding within the 5 days provided for under the *Act*, I find that the 10 Day Notice is valid and therefore the Tenant's application to cancel the 10 Day Notice is dismissed.

In accordance with Section 55(1) of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession, if the notice complies with Section 52 of the *Act*. Upon review of the 10 Day Notice submitted into evidence, I find that it is in compliance with Section 52 and therefore I grant the Landlord a two-day Order of Possession.

### Conclusion

The Tenant's application for the Landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 1, 2018

---

Residential Tenancy Branch