



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF, MT, CNR, LRE, OLC, PSF, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants 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 landlord's 10 Day Notice to End Tenancy for Unpaid Rent (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 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70

The landlord, A.W. attended the hearing on behalf of K.S. via conference call and provided testimony. The tenant did not attend. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on March 8,

2019. The landlord also stated that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail on February 26, 2019 as part of the initial direct request process. The landlord confirmed receipt of the tenant's application for dispute and aware of the tenant's issues.

The tenant, S.J. attended the conference call hearing 36 minutes after the start of the scheduled hearing at the conclusion of the hearing. The tenant, D.J.-T., did not attend. The tenant, S.J. provided no details of the co-tenant, as such, this tenant was unrepresented in this hearing. The tenant stated that she was having difficulties calling in. As such, the hearing was re-started. The landlord had argued that the named tenant, D.J.-T. was not a named tenant and as such had no standing. The tenant confirmed receipt of the landlord's notice of hearing package and the landlord's submitted documentary evidence via Canada Post Registered Mail. Neither party raised any service issues. As such, I find based upon the undisputed testimony of both parties that both parties have been sufficiently served as per section 90 of the Act. A review of the signed tenancy agreement does not provide for the missing named tenant and as such, has no standing in this hearing. The cover of this decision shall reflect only the landlord's named parties.

#### Preliminary Issue(s)

At the outset, the tenants' application was clarified for:

- 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 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70

The tenant was unable to provide any relevant evidence regarding how these portions of the application were related to the 10 Day Notice. RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for an order for the landlord to comply with the Act, an order for the landlord

to provide services or facilities and an order to reduce rent for services or facilities agreed upon but not provided. As these sections of the tenant's application are unrelated to the main section which is for more time to make an application for dispute and to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant's claim with leave to reapply.

The tenant has applied for more time to make an application for dispute. The tenant stated she began the process of applying for dispute on February 13, 2019, but did not submit her application until February 27, 2019. The tenant stated that she was ill and unable to complete her application. The landlord submitted no objections. I find in the circumstances that as the landlord has applied for an order of possession and a monetary order for unpaid rent that the hearing shall proceed. As such, the tenant's request for more time is not required as the merits of the 10 Day Notice dated February 8, 2019 shall be addressed.

At the end of the hearing the tenant made comment on the validity of the signed tenancy agreement dated April 14, 2016. The tenant stated that this agreement was not signed by the landlord, but did not state how this was relevant to the applications filed. The agreement was reviewed and the tenant confirmed that the tenancy began in May 2016 and that monthly rent is \$1,100.00 payable on the 1<sup>st</sup> day of each month. As the tenant was unable to provide any further details of how this would affect the outcome of this hearing, the hearing continued. No further issues were made by either party.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed in their testimony that this tenancy began in April 2016. The monthly rent was \$1,100.00 payable on the 1<sup>st</sup> day of each month.

The landlord submitted a copy of a partially signed tenancy agreement dated April 14, 2016 which states in part that this tenancy began on May 1, 2016 on a month-to-month basis. The monthly rent was \$1,100.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$550.00 was required, but noted as not paid.

Both parties confirmed the landlord served the tenant with a 10 Day Notice dated February 8, 2019 which states in part that the tenant failed to pay rent of \$590.00 that was due on February 1, 2019. The 10 Day Notice also displays an effective end of tenancy date of February 17, 2019.

The tenant provided testimony as well as written details stating that the 10 Day Notice dated February 8, 2019 was served by posting it to the rental unit door on February 8, 2019. The landlord confirmed service as per a submitted copy of a proof of service document dated February 8, 2019 with a witness.

The landlord stated that on February 1, 2019 a partial payment of \$550.00 was paid via a government cheque by the tenant, but that no payments have been received from the tenant subsequently. The landlord stated that outstanding rental arrears of \$550.00 were owed as well as with \$20.00 in monthly parking fee(s) and a \$20.00 late rent fee (for February 2019) as per the signed tenancy agreement which allows for up to \$25.00 for a late rent fee.

The tenant provided direct testimony stating that no rent was paid to the landlord for the outstanding balance of \$550.00 for February 2019 as well as the \$20.00 parking fee and a late rent fee of \$20.00 or any other payments subsequently. The tenant argued that she had requested a rent reduction from the landlord which went unanswered by the landlord. The tenant stated that she was advised by the Residential Tenancy Branch Office to not pay any rent. The tenant confirmed in her direct testimony that permission to withhold the rent was not given by the landlord nor has the tenant received an order authorizing her to withhold rent.

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide any evidence that she was entitled to withhold any rent as per an agreement with the landlord or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for February 2019. The tenant admits that she did not pay February's rent as well as the parking fee and any subsequent late rent fees.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued February 8, 2019 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on February 17, 2019, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admitted that she has not paid February's rent as well as the owed \$20.00 parking fee and the \$20.00 late rent fee. I find that the landlord is entitled to this amount. I issue a monetary order in the landlord's favour in the amount of \$590.00, to enable the landlord to recover unpaid rent, a parking fee and a late rent fee from the tenant.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for unpaid rent of \$690.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and enforced as orders of those courts.

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 15, 2019

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Residential Tenancy Branch