



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, OLC, FFT, MNDCT/ OPC, OPRM-DR, FFL

### Introduction

This hearing originally convened on July 16, 2019 and a decision dated July 16, 2019 was rendered. In that decision a portion of the tenant's application was determined, and the claims made in the tenant's second amendment were adjourned to this hearing. This decision should be read in conjunction with the July 16, 2019 decision. In the July 16, 2019 decision I allowed the landlord to file a cross application and both parties submitted subsequent amendments.

This cross-application hearing that dealt with the tenant's application and amendments pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application and amendments pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord, the landlord's counsel, the tenant and the tenant's support person attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that pursuant to the July 16, 2019 decision, she re-posted her second amendment on the landlord's door on July 20, 2019. The landlord testified that he received the tenant's second amendment on July 21, 2019. I find that the landlord was served with the tenant's second amendment in accordance with section 88 of the *Act*.

The tenant testified that she posted her third amendment on the landlord's door on August 1, 2019. The landlord testified that he received the tenant's third amendment on August 2, 2019. I find that the landlord was served with the tenant's third amendment in accordance with section 88 of the *Act*.

The tenant testified that she posted her fourth amendment on the landlord's door on August 22, 2019. The landlord testified that he received the tenant's fourth amendment on August 23, 2019. I find that the landlord was served with the tenant's fourth amendment in accordance with section 88 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Preliminary Issue- Service of Landlord's Application and Amendments

Both parties agree that the landlord and tenant share a mailbox and only the landlord has a key to the mailbox. Both parties agree that the landlord gives the tenant any mail he receives that is addressed to her.

The landlord testified that he served the tenant with his application for dispute resolution and his first and second amendments via registered mail. The landlord testified that he received the Canada Post pick up slips for all three packages in his mailbox and posted them on the tenant's door. The tenant testified that she did not receive any Canada Post pick up slips on her door and did not receive the landlord's application for dispute resolution, or the landlords first and second amendments.

The landlord did not enter into evidence any proof of service documents or Canada Post receipts to prove the registered mailings and was not able during the hearing to provide the tracking numbers for the registered mail packages.

Section 89 of the *Act* sets out the rules for serving applications for dispute resolution and section 88 of the *Act* sets out the rules for serving all other documents. I am not satisfied that the tenant received any of the landlord's application materials or amendments as the landlord

did not enter into evidence any proof of service documentation and the tenant testified that she did not receive the above packages.

At the hearing, I advised the landlord that I was dismissing his application and amendments with leave to reapply.

I notified the landlord that if he wished to pursue this matter further, he would have to file a new application. I cautioned him to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the three 10 Day Notices to End Tenancy for unpaid rent and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notices. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the three notices to end tenancy and recovery of the filing fee for this application.

#### Issues to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notices to End Tenancy, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice(s) to End Tenancy is/are upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 16, 2018 and is currently ongoing. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant to the landlord. A written tenancy agreement was not signed by the parties.

The landlord testified that he posted a 10 Day Notice to End Tenancy for unpaid rent dated June 25, 2019 on the tenant's door on June 25, 2019 (the "First 10 Day Notice"). The landlord testified that the First 10 Day Notice is cancelled and of no force or effect.

The landlord testified that he posted a 10 Day Notice to End Tenancy for unpaid rent dated July 4, 2019 on the tenant's door on July 4, 2019 (the "Second 10 Day Notice"). The tenant testified that she received the Second 10 Day Notice on July 7, 2019. The Second 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,350.00 that was due on July 1, 2019.

The landlord testified that he posted a 10 Day Notice to End Tenancy for unpaid rent dated August 15, 2019 on the tenant's door on August 15, 2019 (the "Third 10 Day Notice"). The tenant testified that she received the Third 10 Day Notice on August 18, 2019. The Third 10 Day Notices states that the tenant failed to pay rent in the amount of \$2,700.00 that was due on August 1, 2019 and failed to pay utilities in the amount of \$436.15 following written demand on June 11, 2019 and July 26, 2019.

The landlord testified that the tenant has not paid any rent for July, August or September 2019. The landlord testified that the tenant has no paid utilities since March 2019. The tenant testified that she has not paid any rent for July, August and September of 2019 because the landlord is not providing services and facilities as previously agreed and because she is saving up money to move out of the subject rental property. The tenant testified that she has not paid utilities since June of 2019 for the same reasons she did not pay rent.

### Analysis

Based on the testimony of the landlord, I find that the First 10 Day Notice is cancelled and of no force or effect.

I find that the Second and Third 10 Day Notices were served on the tenant in accordance with section 88 of the *Act*.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Even if the landlord failed to provide services and facilities agreed upon, the tenant is not permitted to withhold rent. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,350.00 on the first day of each month which she failed to do. I therefore dismiss the tenant's applications to cancel the Second and Third 10 Day Notices.

Since I have dismissed the tenant's applications to cancel the 10 Day Notices for failure to pay rent, I decline to consider the effect of the tenant's non-payment of utilities.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Third 10 Day Notice, I find that it complies with section 52 of the *Act*. Since the tenant's applications to cancel the 10 Day Notices were dismissed and the Third 10 Day Notice conforms to the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

As I have found that the Third 10 Day Notice meets the form and content requirements of section 52 of the *Act*, I decline to consider if the Second 10 Day Notice meets the form and content requirements of section 52 of the *Act*.

I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act* because she was unsuccessful in her application.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: September 17, 2019

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Residential Tenancy Branch