



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: 21054192 CNR, DRI, LAT, LRE, OLC  
Landlord: 21054907 OPR MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed a claim:

- To Cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated September 4, 2019 ("10 Day Notice");
- to dispute a rent increase;
- for authorization to change the lock;
- for an Order to suspend or restrict the Landlord's right to enter; and
- for an Order for the Landlord to comply with the Act and/or tenancy agreement.

The Landlord filed a claim for:

- an Order of Possession for unpaid rent;
- a Monetary Order for \$500.00 damage or compensation under the Act;
- a Monetary Order for unpaid rent in the amount of \$3,750.00; and
- recovery of the \$100.00 Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The teleconference phone line remained open for over 29 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it.

During the hearing the Landlord was given the opportunity to provide her evidence orally, and to ask and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said that a colleague of hers served the Tenant with the Landlord's Application, Notice of Hearing, and documentary evidence in person on September 26, 2019. The Landlord said that the colleague's husband accompanied her as a witness to this service. I find that the Tenant was served with the Landlord's documents in compliance with the Act.

#### Preliminary and Procedural Matters

The Landlord provided her email address in her Application and confirmed it in the hearing. I advised the Landlord that the Decision would be emailed to her and mailed to the Tenant at the rental unit address, and that any Orders would be sent to the appropriate Party.

In the hearing, I advised the Landlord that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Parties both indicated several matters of dispute on their applications, the most urgent of which are the applications to determine the validity of a 10 Day Notice, whether the Landlord gets an Order of Possession, and whether the Landlord is awarded a Monetary Order for unpaid rent owing. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Landlord's request for an Order of Possession, recovery of unpaid rent, and recovery of the \$100.00 Application filing fee at this proceeding. The Landlord's other claims are dismissed, with leave to re-apply.

Given that the Tenant did not attend the hearing to establish the validity of her claims, the Tenant's Application is dismissed in whole without leave to reapply.

#### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

### Background and Evidence

The Landlord agreed that the periodic tenancy began on September 1, 2015, with a monthly rent of \$800.00, due on the first day of each month. Subsequently, the rent increased to \$950.00 per month. The Landlord confirmed that the Tenant paid a security deposit of \$400.00, and no pet damage deposit. The Landlord said that the rental unit is a manufactured home and that the Tenant rents both the trailer and the pad. As a result, these claims fall under the *Residential Tenancy Act* rather than the *Manufactured Home Park Tenancy Act*.

The Landlord said she issued the 10 Day Notice, because the Tenant owed her \$900.00 in unpaid rent as of September 1, 2019. The Landlord said she served the Tenant with the 10 Day Notice by posting it on the rental unit door on September 4, 2019. The Landlord said that the Tenant's boyfriend mowed the lawn of the residential property common areas in August, therefore, she told the Tenants that they only needed to pay \$900.00 in September; however, they paid nothing, so the Landlord served the 10 Day Notice.

In the hearing, the Landlord said that the Tenant did not pay rent for September or October, but that she paid \$900.00 in November 2019. The Landlord said that she accepted the rent on the condition that it was for use and occupancy only and that it did not indicate that the tenancy would continue. The Landlord said she noted this on the receipt.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46(1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**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.

. . .

(4) 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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The Tenant applied for dispute resolution, but she did not attend the hearing to establish the merits of her claim against the Landlord.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on September 7, 2019, three days after it was posted on the rental unit door.

Section 26 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 the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that she was owed \$1,900.00 in unpaid rent as of November 1, 2019.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$900.00 is incorrect, as it was based on outstanding rent amount for September 2019. However, I have found that the Tenant continued to live in the rental unit and did not pay the \$950.00 monthly rent owing for each of October and November 2019. As such, the amount owing by the Tenant to the Landlord is now \$1,900.00. Accordingly, the Landlord requests that the amount of unpaid rent awarded be consistent with the full amount owing by the Tenant.

Pursuant to Rule 4.2 and section 64(3)(c ) of the Act, I amend the Application for dispute resolution to correct the amount of the Monetary Order sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, therefore, she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the original amount the Landlord claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$900.00 to \$1,900.00.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of September 17, 2019. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant; as noted above, the 10 Day Notice was deemed served on the Tenant on September 7, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to September 17, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$1,900.00 in rent owed for October and November 2019. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for November 2019, the Order of Possession will be effective two days after service of the Order on the Tenant.

In addition, the Landlord is awarded \$1,900.00 for unpaid rent. The Landlord is also awarded recovery of her \$100.00 Application filing fee for a total award of \$2,000.00. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$400.00 in partial satisfaction of the Landlord's monetary claim. The Landlord is authorized to retain the Tenant's \$400.00 security deposit. The Landlord is, therefore, awarded a monetary order of \$1,600.00 against the Tenant for the balance of the unpaid rent owing.

Conclusion

The Tenant has not paid rent for the last two months, so her Application is dismissed without leave to reapply. Pursuant to section 55 of the Act, I grant the Landlord an order of possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is authorized to retain the Tenant's security deposit of \$400.00, which is set off against the monetary award of \$2,000.00. The Landlord is awarded a Monetary Order for the balance of the unpaid rent in the amount of **\$1,600.00**.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 18, 2019

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Residential Tenancy Branch