



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *CNR, MNDC, RR, FF*

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent and for a monetary order for loss under the *Act* and for the recovery of the filing fee. The tenant also applied for a rent reduction for repairs that she had carried out.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was accompanied by her agents.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt the tenant's evidence and agreed that he had filed his evidence just three days prior to the hearing. The tenant confirmed having received the evidence late and had had the opportunity to review. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

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 the landlord has applied for a monetary order for loss under the *Act* and for a rent reduction. Since these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy, I dismiss these sections of the tenant's claim with leave to reapply.

Accordingly this hearing only dealt with the tenant's application to cancel the 10 day notice to end tenancy and for the recovery of the filing fee.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The tenancy began on August 01, 2019. The monthly rent is \$2,100.00 payable on the first of each month. The tenant is also required to pay \$150.00 each month for the water supply. Prior to moving in the tenant paid a security deposit of \$2,100.00. The landlord was cautioned about the amount of security deposit he is permitted to collect.

On September 11, 2019, the landlord served the tenant with a 10-day notice to end tenancy for non-payment of rent in the amount of \$2,100.00 and utilities in the amount of \$350.00. The tenant disputed the notice in a timely manner.

The tenant agreed that she paid partial rent for the months of August and October 2019 and did not pay any rent for the months of October and November 2019. The landlord added that the tenant owes \$5,150.00 in unpaid rent and \$450.00 for unpaid utilities. The landlord requested an order of possession effective two days after service on the tenant.

### **Analysis**

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on September 11, 2019 and applied to dispute the notice within the legislated time frame of five days. Even though the tenant made application to dispute the notice to end tenancy within five days, I must uphold the notice because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective immediately. Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

**55** (1) 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.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not pay rent within five days of receiving the notice and still owes rent at the time of this hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant is unsuccessful in her application, she is not entitled to the recovery of the filing fee.

### **Conclusion**

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant.

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: November 25, 2019

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Residential Tenancy Branch