



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 25th AVENUE OCEAN DEVELOPMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the Landlord: OPRM-DR, FFL  
For the Tenant: CNR, FFT

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

The Landlord filed a claim for:

- An order of possession for unpaid rent;
- A monetary order for unpaid rent of \$2,100.00; and
- recovery of their \$100.00 Application filing fee.

The Tenant filed a claim for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated November 19, 2019 ("10 Day Notice"); and
- recovery of his \$100.00 Application filing fee.

The Landlord, K.G., and an agent for the Landlord, S.A. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 10 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Agent. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

As the Tenant did not attend the hearing, I considered service of the application, the Notice of Dispute Resolution Hearing, and the documentary evidence on him. Section

59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on December 13, 2019. The Agent provided a Canada Post tracking number, as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. Further, as the Tenant applied for dispute resolution, himself, he had information about the hearing from his own Application.

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

#### Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and the Agent confirmed her email address in the hearing. The Landlord and Agent confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord said that he applied for recover of the amount of rent owing at the time of the application, saying that it was \$2,100.00 owing for November 2019. However, the Landlord said that the Tenant now owes \$6,300.00 in unpaid rent for November and December 2019, and for January 2020. The Landlord requested that their Application for a Monetary Order be increased to this amount to reflect the changing amount of this debt.

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 his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, I find it reasonable to amend the amount of the Monetary Order sought by the Landlord from the Tenant from \$2,100.00 to \$6,300.00.

#### 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 his \$100.00 Application filing fee?

### Background and Evidence

The Landlord said he purchased the residential property in late October 2019, and that November 1, 2019, was the first day that rent was due to this Landlord from the Tenant. The Agent confirmed that the Tenant owes the Landlord a monthly rent of \$2,100.00, due on the first day of each month. The Agent said that the Tenant did not pay the Landlord a security deposit or pet damage deposit.

The Agent said the Landlord issued the 10 Day Notice, because the Tenant owed him \$2,100.00 in unpaid rent for November 2019. The Agent said she served the Tenant with the 10 Day Notice via posting it on the rental unit door on November 19, 2019. The Agent submitted a proof of service from a witness who observed her serve the 10 Day Notice.

In the hearing, the Agent said: "There was a disputed notice, the Tenant has not attended the hearing, the rent is still unpaid, and it is now outstanding in the amount of \$6,300.00 for November 2019, December 2019, and January 2020." The Agent said the Landlord seeks an Order of Possession and a Monetary Order for the outstanding rent, and recovery of the \$100.00 Application filing fee.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a 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 within the five day deadline of section 46; however, he did not attend the hearing to test his claim against the Landlord's evidence.

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 November 22, 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 he was owed \$6,300.00 in unpaid rent as of January 1, 2020.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$2,100.00 is incorrect, as it was based on outstanding rent amount for November 2019. I find that the Tenant currently owes the Landlord \$6,300.00 in unpaid rent for November 2019, December 2019, and January 2020. Accordingly, pursuant to section 67 of the Act, I award the Landlord **\$6,300.00** from the Tenant for unpaid rent.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of November 29, 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 November 22, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to December 2, 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 or whether he had a right under the Act to deduct all or a portion of the \$2,100.00 in rent owed for November 2019. Therefore, I find that the Tenant did not have a right to withhold any of the rent owing to the Landlord in the last three months. As such, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

Accordingly, 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, December 2019, and January 2020, the Order of Possession will be effective two days after service of the Order on the Tenant.

Given his successful Application, I also award the Landlord recovery of the \$100.00 Application filing fee for a total Monetary Order of **\$6,400.00**.

### Conclusion

The Tenant did not attend the hearing, and he has not paid rent for the last three months; therefore, his Application is dismissed without leave to reapply.

The Landlord is successful in his Application. 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 also awarded a Monetary Order of **\$6,400.00**, based on three months of unpaid rent and recovery of the \$100.00 Application filing fee.

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: January 23, 2020

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Residential Tenancy Branch