



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNC CNR FF  
Landlord: OPR MNR FF

### **Introduction**

The first hearing, held on November 7, 2019, was convened as a result of the Tenant's Application for Dispute Resolution. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the *Act*):

- to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice);
- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice).

The Landlords and the Tenant both attended the hearing on November 7, 2019. The Landlord confirmed receipt of the Tenant's application and evidence package. The Tenant confirmed receipt of the Landlord's evidence package for that hearing. During that hearing, it was identified that neither party submitted copies of the Notices to End Tenancy from October 2019. As such, the hearing was adjourned so that each party could provide copies of these documents prior to the next hearing.

Subsequently, the Landlords filed a separate application on November 12, 2019, for an order of possession and a monetary order for unpaid rent, based on a second 10-Day Notice that was issued in November 2019. The Landlords' application was set, by our office, as a cross application to be heard with the adjourned hearing, January 7, 2020. The Landlords stated they got an email from our office stating that their application was not accepted as a separate application and that it would all be dealt with at the next hearing. The Landlords stated that they were never given a new Notice of Hearing, despite making a separate application based on the 10 Day Notice in November 2019. As a result, the Landlord did not serve any new Notice of Hearing, or new evidence to

the Tenant, beyond the second 10 Day Notice (which the Tenant already had). Given the Landlord was not given a second Notice of Hearing for their application, and did not serve the evidence uploaded as part of that application separately to the Tenant, I explained to them that they would have to rely on evidence they already uploaded and served as part of the Tenant's application (the first hearing) to cancel the October 2019 notices. As the issues were the same for October as they were for November, the Landlord was okay with this.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter #1

As highlighted above, the Tenant and the Landlord both filed applications, separately. It appears as though there was some confusion and potential misinformation given to the parties regarding which applications and issues would be heard, and when. At the start of the second hearing, which was reconvened to discuss the two notices issued in October 2019, I discussed the Landlord's subsequent application, made after the first hearing was adjourned. I reviewed what the Landlord had applied for (order of possession based on the 10 Day Notice, and a monetary order for unpaid rent).

I explained what the Landlord had applied for, and both parties agreed it was a continuation of the same issues listed in the first application made by the Tenant to cancel the notices. The Landlord confirmed that the 10 Day Notice in November 2019 was issued for the same reason as it was in October, just for the increased amount, as rent was still unpaid.

After discussing the list of issues at the start of the second hearing, I confirmed with both parties that they wished to hear all of the issues on both applications, in full, as part of this hearing today. Neither party took issue with this. Given all of the above, I order both applications to be heard, in full, as part of this hearing. I note the following portion of the Act:

#### ***Director may hear disputes together***

**73** (1) *If 2 or more applications for dispute resolution are accepted in respect of related disputes with the same landlord, the director may hear the disputes at the same time.*

### Preliminary Matter #2

The Landlord has requested to amend their application to include rent that has accrued since the initial Notice was issued. I turn to the following Rules of Procedure (4.2):

#### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original notices were issued.

### Preliminary Matter #3

The Tenant raised the issue as to who the Landlord was at the start of the proceeding. The Tenant listed A.S., K.S., and G.D. as Landlords. However, she clarified that G.D. is the owner of the house, and the other two people are the upstairs Tenants who are attempting to act as her Landlords. I find I must make a determination on this issue before proceeding.

I note the Act defines a Landlord as follows:

*"landlord", in relation to a rental unit, includes any of the following:*

*(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*

- (i) permits occupation of the rental unit under a tenancy agreement, or*
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

*(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*

*(c) a person, other than a tenant occupying the rental unit, who*

*(i) is entitled to possession of the rental unit, and*

*(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

*(d) a former landlord, when the context requires this;*

*[my emphasis added]*

The owner of the rental unit, G.D, appeared at the first hearing and stated that he rents the whole house (separate upper and lower units) to A.S. and K.S. He stated that these individuals then sub-let (with his prior written permission) to the person listed as the “Tenant” (Q.S.) on this application. The Landlord provided a copy of a written letter granting permission for A.S. and K.S. to rent the lower unit out as they wished. The owner confirmed that rent for the whole house was still to be paid to him by A.S. and K.S., as that is who he had a tenancy agreement with.

Having reviewed the totality of the situation, I find the original Tenants, A.S. and K.S., are Landlords under the Act since, at the time they sublet the lower suite to Q.S., they no longer occupied the lower unit, and they were entitled to possession of the rental unit (under their original tenancy agreement with the owner for the whole house).

The sub-tenant, Q.S.’s, contractual rights and obligations are as set out in the Tenancy Agreement between her and A.S. and K.S (agreement provided into evidence). Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. Further, the original tenants A.S. and K.S. (now acting as the Landlords) also do not have all the responsibilities that a landlord has under the Act (such as making repairs to the unit).

The original tenants, A.S. and K.S., remain the tenants of the original landlord and owner, G.D. Further, A.S. and K.S. granted exclusive occupancy to the sub-tenant, Q.S., through the tenancy agreement they signed with her on June 18, 2018. Although Q.S. stated there was another agreement signed, she did not have a copy, and the only written tenancy agreement including Q.S. is the tenancy agreement between her and A.S. and K.S. I find that A.S. and K.S. have become the “landlord” of the sub-tenant for the purposes of this application.

In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant. In this case, there is no evidence there is a tenancy agreement between the sub-tenant and the owner/Landlord. As such, there is no contractual relationship between the original owner/landlord, G.D., and the sub-tenant.

I find the 1 Month Notice, issued by the owner, to Q.S., on October 2, 2019, is of no force of effect, as the owner does not have a contractual relationship or a

Landlord/Tenant relationship with the sub-tenant. For the purposes of this hearing, the only notices I will consider are those issued by A.S. and K.S. to Q.S.

For the purposes of this decision, from here on I will collectively refer to A.S. and K.S. as the Landlords, and Q.S. as the Tenant.

#### Issue(s) to be Decided

- Is the Tenant entitled to have either of the Landlord's 10 Day Notices or the 1-Month Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order for unpaid rent?

#### Background and Evidence

The Tenancy Agreement provided into evidence shows that monthly rent in the amount of \$1,330.00 was to be paid on the first of each month. Although the Tenant stated there was also another agreement, she did not provide a copy of this agreement. Monthly rent included most utilities. Both parties agreed that the Landlords currently hold a security deposit in the amount of \$600.00.

The Landlords explained that the Tenant moved in around mid-June 2018 and paid them \$1,330.00 per month, without issue up until the summer of 2019, when their relationship with the Tenant became strained. The Tenant confirmed that she paid \$1,330.00 to the Landlords on the first of the month, without issue for around a year.

The Landlords explained that in the summer of 2019, they began to have disagreements and dysfunction with the Tenant. The Tenant stated that after getting some improper and unofficial written notices to end the tenancy in August/September 2019, she made some phone calls to try and figure out what she should do. The Tenant stated she determined, after gathering information, that A.S. and K.S. were not officially her Landlord (or agent of) and she did not have to interact, respond, or pay rent to them. The Tenant stated that she decided to start paying her rent to the owner directly starting October 1, 2019. The Tenant stated that she paid \$1,200.00 (as per the bank drafts provided into evidence) to the owner, and paid \$130.00 to the Landlords, starting October 1, 2019.

The Tenant stated that she advised the Landlords that she would be paying rent to the owner directly. The Landlords stated that they reminded the Tenant that this was not

how the tenancy agreement was set up, and now how things had been done in the past. The Landlords took issue with the Tenant's changes. Ultimately, neither the Landlords nor the owner deposited the funds, as it was not how rent was supposed to be paid, as per their written agreement.

Subsequently, the Landlords issued, and the Tenant stated she received, a 10-Day Notice on October 2, 2019. The Landlords noted that this 10 Day Notice indicated the due date for rent was September 1, 2019, but it should have listed October 1, 2019. The Landlords also issued a 1-Month Notice on October 2, 2019. The Tenant also acknowledged receiving the 1-Month Notice on this same day. A copy of this 1 Month Notice was provided into evidence and it listed several grounds.

The Landlords issued, and the Tenant acknowledged receiving, a second 10 Day Notice on November 3, 2019. This 10 Day Notice listed that October and November rent remained outstanding, totalling \$2,660.00. The Tenant confirmed that again for the month of November, she took a bank draft in the amount of \$1,200.00 to the owner, and gave a separate bank draft in the amount of \$130.00 to the Landlords for a utilities payment. The Landlords confirmed that neither they nor the owner deposited these amounts. The owner again tried to tell the Tenant to pay A.S. and K.S., not him.

The Landlords are now seeking to recover unpaid rent from October, November, December, and January, totalling \$5,320.00. The Tenant confirms that she has the rent in her account, and can pay it, but she does not feel she should have to pay it to the Landlords, A.S. and K.S.

### Analysis

I note there are two 10 Day Notices issued by the Landlords, as well as a 1-Month Notice. I first turn to the 10 Day Notices.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The Tenant stated that although she had a written rental agreement with the Landlords, A.S. and K.S., she also made a subsequent agreement with the owner, G.D. However, I

find it important to note that the Tenant has provided no evidence to support that there was any subsequent agreement, in writing, that would alter the tenancy agreement she signed with A.S. and K.S. at the time she moved in. Further, the owner denied that there was any such agreement. As the tenancy agreement listed A.S. and K.S. as the Landlords, I find this is who the Tenant was supposed to pay rent to. Further, the tenancy agreement provided into evidence lists rent as \$1,330.00, including utilities, not \$1,200.00 for rent, plus \$130.00 for utilities, as the Tenant has alleged. Regardless, the full amount was payable to the Landlords, A.S. and K.S.

First, I turn to the most recent 10 Day Notice. I note the Tenant acknowledges receiving this notice on November 3, 2019. This notice indicated that the Tenant owed rent for October and November, totalling \$2,660.00. I note the Tenant stated she tried to pay her rent but it was refused. I note the Tenant provided a bank draft in the amount of \$1,200.00 to the owner and \$130.00 to the Landlords, A.S. and K.S., for October and November of 2019. This same payment method was attempted for the first 10 Day Notice in October 2019.

As this payment arrangement was not in accordance with the tenancy agreement, and the manner in which it had been paid for the past year, the owner and the Landlord refused the new payment arrangements. As the Landlords, I find A.S. and K.S. should have accepted any rent payments they were offered, even if it was only for \$130.00, and then collected the balance thereafter. However, I also find it important to note that the tenancy agreement shows that rent is \$1,330.00 and is payable to the Landlords, A.S. and K.S. I find the Tenant had no legal right to change who she was paying rent to. I find she was required to pay rent, as she had been for the previous year, to the people listed as the Landlords on her tenancy agreement, A.S. and K.S.

Although the Tenant tried to pay the Landlords, A.S. and K.S., \$130.00 each month, I find she failed to make her rent payments in full to the correct person. I do not find the Tenant had the legal authority to withhold rent or to alter who she paid rent to, without an arbitrator's order (through dispute resolution).

I note the Tenant only attempted to pay \$130.00 each month to the Landlords, A.S. and K.S. I find the amounts she attempted to pay to the owner, G.D., are considered unpaid, as they were not directed to the correct party (as listed on the tenancy agreement). Ultimately, I find rent has not been paid to the Landlords, when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent.

As such, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the latest 10 Day Notice (from November 2019), I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

In light of my finding that the tenancy is ending based on the November 2019 10-Day Notice, I find it is not necessary for me to consider the remaining notices to end tenancy.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. I accept that the Tenant tried splitting the rent and utility payments up and gave bank drafts to the Landlords and the owner for a few months. However, I note that these bank drafts were not accepted or deposited. The Tenant acknowledged that she still has the rent for the past few months. After considering the evidence before me, I find there is sufficient evidence to demonstrate that rent for October, November, December and January have still not been paid, regardless of the reason. The Tenant occupied the unit for that time, and I find the tenant owes and has failed to pay rent for the months of October 2019 till January 2020 ( $\$1,330.00 \times 4 = \$5,320.00$ ).

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlords, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$5,320.00
Other:	
Filing fee	\$100.00
LESS:	
Security Deposit currently held by Landlord	(\$600.00)



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<b>TOTAL:</b>	<b>\$4,820.00</b>
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Conclusion

The Tenant's application to cancel the 10 Day Notices is dismissed.

The landlords are granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlords are granted a monetary order pursuant to Section 67 in the amount of **\$4,820.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 8, 2020

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Residential Tenancy Branch