



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Acona Investments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

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

### Introduction

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, further to having served a One Month Notice to End the Tenancy for Cause, dated March 19, 2020 ("One Month Notice");
- A Monetary Order for unpaid rent of \$800.00 due on March 1, 2020; and
- recovery of the \$100.00 Application filing fee.

The Tenant filed a claim to:

- cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2020 ("10 Day Notice");
- cancel a One Month Notice; and
- recover her \$100.00 Application filing fee.

An agent for the Landlord, J.Z. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on March 19, 2020. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that he 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 Agent. The Landlord said that once the Tenant applied for dispute

resolution claiming against the Landlord, the Agent said he served the Tenant with his Application documents, including the Notice of Hearing and documentary evidence in reply to the Tenant's Application via registered mail on March 26, 2020. The Agent provided a Canada Post tracking number to support this testimony. I find that the Tenant was deemed served with the Landlord's Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Landlord's Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

During the hearing the Landlord was given the opportunity to provide his 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 ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on April 23, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 20 minutes, however, neither the Applicant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I dismiss the Tenant's Application without leave to reapply.

#### Preliminary and Procedural Matters

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

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, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent

owing. Accordingly, after correcting the original amount claimed by the Landlord, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant for rent owing from \$800.00 to \$1,600.00.

Issue(s) to be Decided

- 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 \$100.00 application filing fee?

Background and Evidence

The Agent submitted a copy of the tenancy agreement the Parties had signed, and he confirmed the details of the tenancy agreement in the hearing, as follows: The fixed term tenancy began on January 1, 2020 running to January 31, 2021; it had a monthly rent of \$800.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00, and no pet damage deposit.

One Month Notice

The Agent said in the hearing that the One Month Notice was signed and dated March 19, 2020, that it had the rental unit address and that he served the Tenant with it via registered mail sent on March 19, 2020. The Agent said the One Month Notice had an effective vacancy date of April 30, 2020. The Agent said that the ground for the eviction notice was that the Tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Agent explained this further on the One Month Notice under the heading: "Details of the Event(s)":

A registered letter was sent March 6<sup>th</sup>, 2020 giving the tenant until March 16<sup>th</sup>, 2020 to provide proof of insurance. This is a material term of their tenancy agreement. Tenant moved in Jan 1<sup>st</sup>, 2020. Tenant stated that they would not purchase insurance however after speaking with the tenancy branch she stated that she would provide us proof of insurance prior to the deadline. We have not seen any proof as of today's date. There is also a active 10 day termination and filing for an order of possession for this suite.

[reproduced as written]

The Agent pointed to clause 4(bb) of the tenancy agreement, which sets out that it is a

material term of the tenancy agreement that the Tenant must have insurance for the rental unit. Part of this clause states:

The tenant acting prudently, shall carry sufficient insurance coverage for his personal property together with sufficient insurance coverage including fire, smoke, water damage, theft and third-party liability. The Tenant will provide a copy of their insurance prior to occupancy. If the tenant does not carry insurance for any portion of the tenancy, they accept that they will not dispute the Landlord's option to terminate their tenancy with a 30 days notice.

The Agent submitted a copy of an email he sent to the Tenant dated March 6, 2020, which sets out the requirement for the Tenant to provide proof of insurance to the Landlord or face eviction on this ground. The Agent submitted email communication between the Parties that evidenced the Tenant having received the above noted communication dated March 6, 2020, and her unwillingness to comply with it.

#### 10 Day Notice

The Agent submitted evidence that he had served the Tenant with a 10 Day Notice that was signed and dated March 2, 2020, had the rental unit address, was served on the Tenant via registered mail on March 2, 2020, having a vacancy effective date of March 17, 2020, and the ground being that the Tenant failed to pay \$800.00 in rent owing to the Landlord on March 1, 2020. In the hearing, the Agent said that the Tenant has not paid rent since February 2020, and therefore, that his monetary claim has risen to \$1,600.00 to cover the Tenant's failure to pay March and April 2020 rent to the Landlord.

#### Analysis

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 26 of the Act states: "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 this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to section 26 of the Act, I award the Landlord a monetary order of \$ .00 in recovering of the unpaid rent.

### Analysis

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

#### One Month Notice

Section 47 of the Act states:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Further, RTB Policy Guideline 8 (PG #8) states:

### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

10 Day Notice

Section 26 of the Act states: "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 this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to section 26 of the Act, I award the Landlord with \$1,600.00 from the Tenant in recovery of the unpaid rent.

When I consider the undisputed evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of both the One Month Notice and the 10 Day Notice. I find that the Tenant breached a material term of the tenancy agreement by failing to obtain insurance and failing to provide proof of this coverage to the Landlord by the date required. I also find that the One Month Notice complies with the requirements of section 52 of the Act, as to form and content. I, therefore, find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act, and I grant the Landlord an Order of Possession in this matter.

Further, I find that the Tenant failed to pay rent owing to the Landlord under the tenancy agreement for March and April 2020 in the total amount of \$1,600.00. I also find that the 10 Day Notice complies with the requirements of section 52 of the Act, as to form and content. I therefore award the Landlord with recovery of \$1,600.00 in unpaid rent from the Tenant, pursuant to section 67 of the Act.

Given the Landlord's success in their application, I award the Landlord recovery of their \$100.00 application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's \$400.00 security deposit in partial satisfaction of the Landlord's monetary claim. I award the Landlord with a Monetary Order of \$1,300.00 for the balance of the award owing.

### Conclusion

The Landlord is successful in their application for remedy under the Act, as they provided sufficient evidence to support their claim for an Order of Possession and a Monetary Order. The Landlord is also awarded recovery of the \$100.00 Application filing fee.

The Tenant did not attend the hearing to present the merits of her application. The Tenant's application is, therefore, wholly dismissed without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on April 30, 2020 at 1:00 p.m. **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, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$1,700.00. I authorize the Landlord to retain the Tenant's full security deposit of \$400.00 in partial satisfaction of the claim. The Landlord is granted a Monetary Order under section 67 for the balance owing by the Tenant to the Landlord in the amount of \$1,300.00.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: April 23, 2020

---

Residential Tenancy Branch