



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the Landlord: OPRM-DR, OPR-DR, FFL

For the Tenant: CNR, LRE, OLC, 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 for unpaid rent, further to having served a 10 Day Notice to End Tenancy for Unpaid Rent dated February 5, 2020 ("10 Day Notice");
- a monetary order for unpaid rent in the amount of \$2,200.00; and
- recovery of his \$100.00 Application filing fee.

The Tenant filed a claim for:

- an order to cancel the 10 Day Notice;
- an order suspending or restricting the Landlord's right to enter;
- an order for the Landlord to Comply with the Act or tenancy agreement; and
- recovery of her \$100.00 Application filing fee.

An agent for the Landlord, R.M., ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 18 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.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing, the Agent was given the opportunity to provide his evidence orally and to 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 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 27, 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 18 minutes; however, neither the Tenant 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 of the Rules of Procedure, I **dismiss the Tenant's Application without leave to reapply.**

The Tenant was sent her Notice of Hearing documents on February 27, 2020, to be served on the Landlord. The Agent testified that he served the Tenant with the Landlord's Notice of Hearing documents by Canada Post registered mail, sent on March 3, 2020. The Landlord provided a Canada Post tracking number as evidence of service. 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.

The Agent said that he did not receive anything from the Tenant in terms of her Application and documentary evidence, which she had uploaded to the RTB. Accordingly, pursuant to sections 59 and 62 of the Act, I will not consider the Tenant's evidence uploaded to the RTB, as it was not served on the Landlord and, therefore, it would be administratively unfair to consider evidence to which the Landlord has not had the opportunity to respond.

#### Preliminary and Procedural Matters

The Parties provided their email addresses in their respective Applications. At the outset of the hearing the Agent confirmed his email address and his understanding that the

Decision would be emailed to both Parties and any Orders emailed to the appropriate Party.

#### 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 recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Agent submitted a copy of the tenancy agreement and confirmed that the fixed term tenancy began on September 1, 2019, running until August 31, 2020. The tenancy was then to operate on a month to month basis. The Agent confirmed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$2,200.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$1,100.00, and no pet damage deposit.

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated February 5, 2020, had the rental unit address, was served by registered mail on February 5, 2020, and had the grounds that the Tenant failed to pay her \$2,200.00 rent to the Landlord when it was due on February 1, 2020. The Agent said that the Tenant has now paid her rent in full to the end of April 2020; therefore, the Landlord is no longer seeking a monetary order for unpaid rent.

The Agent said that the Tenant fabricated evidence that she paid the rent within the time required by section 46 of the Act. The Agent said that the Tenant did not pay the rent owing on February 1, 2020, until March 5, 2020. The Agent said the Tenant has now paid the rent owing to the Landlord up to the end of April 2020. The Agent said that the rent was accepted for use and occupancy only.

#### 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.

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 February 10, 2019, five days after it was sent to her by registered mail. The Tenant had until February 15, 2020 to apply for dispute resolution or pay the rent owing. The Tenant applied for dispute resolution on February 18, 2020, but she did not attend the hearing to pursue her claim against the Landlord's evidence.

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 Agent said that the Landlord was owed \$2,200.00 in unpaid rent as of February 2, 2020.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of February 15, 2020. 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 February 10, 2020. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to February 20, 2020. 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 \$2,200.00 in rent owed for February 1, 2020. 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 did not pay rent for February 1, 2020 until March 5, 2020, the **Order of Possession will be effective two days after service** of the Order on the Tenant.

I also award the Landlord recovery of the \$100.00 Application filing fee. The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit for satisfaction of this award.

### Conclusion

The Landlord is successful in his application for an order of possession for the rental unit, further to having served the Tenant with the 10 Day Notice. The Tenant paid her February 2020 rent for over a month late, and she failed to apply for dispute resolution within the timeline set out in section 46 of the Act. Further, the Tenant failed to serve the Landlord with her application, Notice of Hearing, and documentary evidence, pursuant to section 59 of the Act. Accordingly, the Tenant's Application is dismissed without leave to reapply.

The Landlord is awarded recovery of his \$100.00 Application filing fee. The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit once in satisfaction of this award.

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.

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 27, 2020

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Residential Tenancy Branch