



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OLC CNR AS

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord and his lawyer attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his lawyer, and I were the only ones who had called into this teleconference.

The landlord's counsel stated that the landlord served the tenant with his evidence package of April 16, 2020 by posting it on the door of the rental unit. I find that the tenant is deemed served with this package on April 19, 2020, three days after the landlord posted it, in accordance with sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Effect of Tenants' Non-Attendance**

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

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.

As such, the landlord bears the evidentiary burden to prove that the Notice is valid. The tenant bears the onus to prove that she is entitled to the relief sought in their applications, other than the relief of having the Notice cancelled.

As the tenant failed to attend this hearing, I find that she has failed to discharge her evidentiary burden to prove that they are entitled to the orders sought. Pursuant to Rule of Procedure 7.4, the tenant (or her agent) must attend the hearing and present her evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the landlord to the Residential Tenancy Branch in advance of the hearing.

I dismiss the portions of the tenant's application not relating to the validity of the Notice without leave to reapply.

### **Issues to be Decided**

Is the tenant entitled to an order cancelling the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting December 1, 2019 and ending November 31, 2020. Monthly rent is \$1,700 and is payable on the first of each month. In addition to the tenant, the tenancy agreement named another tenant ("KB") as a party. The tenant and KB paid the landlord a security deposit of \$500, which the landlord continues to hold in trust for the tenant and KB.

The landlord's counsel stated that KB moved out of the rental unit before the end of December 2019. He testified that, despite this, the tenant paid all of January 2020 rent (with the last portion of January 2020 rent being paid on February 18, 2020).

The tenant failed to pay February 2020 rent on time. She paid \$375 of February 2020 rent on January 31, 2020. She did not pay any other amount until February 26, 2020, when an organization on her behalf paid \$450.

The landlord served the tenant with the Notice on February 21, 2020 by posting it on the front door of the rental unit. It specified an effective date of March 2, 2020. It stated that, as of February 1, 2020, the tenant was \$1,700 in arrears.

The landlord's counsel stated that, currently, the tenant is \$5,975 in arrears, having paid \$825 of February 2020 rent, and no part of March, April, or May 2020 rent.

The landlord argued that the tenancy agreement was not ended by KB vacating the rental unit, as, by paying the full amount of January 2020 rent, the tenant indicated her intention to continue the tenancy. The landlord argued that the tenant is jointly and severally liable with KB for paying the full amount of monthly rent owed.

### **Analysis**

Policy Guideline 13 discusses the rights and responsibilities of co-tenants. It states:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

Section 45 of the Act sets out how a tenant may end a fixed term tenancy:

(2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice,

(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As such, I find that KB was not able to end the tenancy by moving out in December 2019. Despite her departure, the tenancy continued. Per Policy Guideline 13, the tenant is jointly and severally liable with KB for damages arising from breaches of the Act by either of them. Accordingly, the tenant is obligated to pay the full amount of rent as required by the tenancy agreement, notwithstanding the fact that KB has vacated.

Based on the tenancy agreement, I find that the tenant is obligated to pay monthly rent in the amount of \$1,700. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I find that the tenant was \$1,925 in arrears on February 1, 2020 (\$1,700 February rent, less \$375 paid January 31, 2020, plus \$600 owing for January 2020 rent). I find that to date, the tenant, has only paid \$825 of February 2020 rent.

On this basis, I find that the Notice was validly issued, and that the tenant owes the landlord \$825 in rent for February 2020 rent. I accept the landlord's evidence that the tenant has failed to pay any portion of March, April, or May 2020 rent.

Accordingly, I dismiss the tenant's application to cancel the Notice.

Section 55(1) of the Act 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.

I find that the Notice complies with section 52. Accordingly, I grant the landlord an order of possession against the tenant effective two days after service of this order by the landlord on the tenant.

I decline to make any order regarding the repayment of any rent owing, as no application for repayment is before me.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

*Residential Tenancy (COVID-19) Order, MO 73/2020 (Emergency Program Act)* made March 30, 2020 (the "**Emergency Order**") permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act. As such, it may not be filed in the Supreme Court of BC until the state of emergency declared March 18, 2020 ends (as per section 1 of the Emergency Order).

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: May 4, 2020

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Residential Tenancy Branch