



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, MNDCT, OPR-DR-PP, OPRM-DR, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On September 8, 2020, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*") and seeking an Order to comply pursuant to Section 62 of the *Act*.

On October 14, 2020, the Tenant amended his Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

On September 16, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with P.O. attending as counsel for the Tenant. The Landlord attended the hearing with K.L. and Y.S. attending as agents for the Landlord. All in attendance, except for P.O., provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by registered mail on or around September 8, 2020 and K.L. confirmed that the Landlord received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received the Tenant's Notice of Hearing package.

The Tenant advised that he served his Amendment and evidence package by hand on October 14, 2020. He did not check to see if the Landlord could view his digital evidence as per Rule 3.10.5 of the Rules of Procedure. K.L. confirmed that the Landlord received this package and that the digital evidence could be viewed. Based on this undisputed evidence, I am satisfied that the Landlord received the Tenant's Amendment

and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

K.L. advised that the Tenant was served the Landlord's Notice of Hearing and evidence package by registered mail on September 23, 2020 and the Tenant confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant received the Landlord's Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlord's 10 Day Month Notice to End Tenancy for Unpaid Rent, that the Tenant's other claims would be dismissed, and that he is at liberty to apply for these claims under a new and separate Application.

As well, the parties were advised that recording of the hearing was prohibited as per Rule 6.11 of the Rules of Procedure below. The parties were Ordered to stop recording if they were, and to delete any recordings. The parties were also cautioned that failure to comply with this Order may result in Administrative Penalties as per Section 87.3 of the *Act* below.

### ***Recording of hearings***

#### ***6.11 Recording prohibited***

*Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.*

#### ***6.12 Official transcript***

*A party requesting an official transcript by an accredited Court Reporter must make a written request stating the reasons for the request to the other party and to the Residential Tenancy Branch directly or through a Service BC Office not less than seven days before the hearing.*

### **Administrative penalties**

**87.3 (1)***Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has*

- (a) contravened a provision of this Act or the regulations, or*
- (b) failed to comply with a decision or order of the director.*

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on December 1, 2018, that rent was established at an amount of \$1,850.00 per month, and that it was due on the first day of each month. A security deposit of \$925.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

Y.S. advised that the Notice was served to the Tenant by posting it to his door on September 2, 2020. The Tenant confirmed that he received the Notice on or around that day. The Notice indicated that \$1,850.00 was owing for rent on September 1, 2020. The effective end date of the tenancy was noted as September 15, 2020.

### Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss

settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The 10 Day Notice to End Tenancy for Unpaid Rent of September 2, 2020 is cancelled and of no force or effect.
2. The Tenant will give up vacant possession of the rental unit by **1:00 PM on November 30, 2020 after service of this Order** on the Tenant. The Landlord will be awarded a conditional Order of Possession for this date.
3. Rent for September, October, and November 2020 totals \$5,550.00. The Tenant must pay **\$2,775.00** by November 15, 2020.
4. If condition 3 is not satisfied in its entirety, the Landlord's conditional Order of Possession will be effective **two days** after service of the Order on the Tenant.
5. The Tenant must pay the balance of the September, October, and November 2020 rent of **\$2,775.00** by December 31, 2020.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of this full and final settlement of these matters.

The Landlord will also be granted a conditional Monetary Order in the total rental arrears for September, October, and November 2020 owed by the Tenant, in the event that the Tenant does not pay these amounts in accordance with this settlement agreement. However, if the Tenant pays some or all of the arrears, the Monetary Order will only be enforceable in the amount that remains outstanding.

The parties were also advised that any affected rental arrears owed under the State of Emergency would be dealt with in a subsequent hearing if there was a valid payment plan in place and the Tenant did not comply with the required payments.

### Conclusion

The parties reached a full and final settlement agreement in resolution of this dispute. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, based on the above, I hereby Order that the 10 Day Notice to

End Tenancy for Unpaid Rent of September 2, 2020 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, the Landlord is granted a conditional Order of Possession effective at **1:00 PM on November 30, 2020 after service of this Order** 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.

If condition 3 of this settlement is not satisfied in its entirety, the Landlord's conditional Order of Possession will be effective **two days** after service of the Order on the Tenant.

Moreover, in recognition of the settlement agreement, I provide the Landlord with a conditional Monetary Order in the amount of **\$5,550.00** to serve and enforce upon the Tenant, if necessary. This amount is only for September, October, and November 2020 rent. The Order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. Only the amounts remaining unpaid will be enforceable on the Tenant.

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: October 29, 2020

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Residential Tenancy Branch