



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 310016859**  
**Additional File(s):910015624**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

**Avtar Khera, Gurjit Khera, Landlord(s),**  
Applicant(s)/Respondent(s)

And

**Keut Yu Chau, Tenant(s),**  
Applicant(s)/Respondent(s)

Regarding a rental unit at: 7611 Wright Street, Burnaby, BC

Date of Hearing: October 22, 2020, by conference call.

Date of Decision: October 23, 2020

Attending:

For the Landlord: Avtar Khera  
Gurjit Khera  
Suneil Sangha (counsel)

For the Tenant: Keut Yu Chau

Previous dispute resolution hearing file number: 310005679



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## **INTERIM DECISION**

**Dispute Codes**      **CNR, FFT**  
                                 **MNDL-S, MNRL-S, FFL**

### **Introduction**

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the *Residential Tenancy Act* (“Act”).

The tenant sought:

- An order to cancel a 10 Day Notice for Unpaid rent pursuant to sections 46 and 55 of the Act; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord sought:

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The landlords attended the hearing and were represented by their counsel, SS. The tenant attended on her own behalf. As both parties were present, service of documents was confirmed. Both parties acknowledge receipt of one another’s Applications for Dispute Resolution and stated they had no concerns with timely service of documents.

### **Preliminary Issue**

At the commencement of the hearing, I advised the parties that if both the landlord’s and tenant’s applications couldn’t be heard during the one hour allotted for hearing, I would adjourn the landlord’s application to be continued at a later date. Orders related to the adjourned hearing follow at the conclusion of this decision.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. A month to month tenancy agreement was signed on July 15, 2015 to rent the landlord's house for \$2,300.00 per month, payable on the first day of each month, commencing August 1, 2015. A copy of the tenancy agreement was provided as evidence. The landlord testified that a security deposit of \$1,150.00 was collected from the tenant which he continues to hold. No formal condition inspection report was signed between the parties however the landlord took photos of the unit at the commencement.

In July of 2019, the parties verbally agreed that the tenancy would increase to \$2,700.00 per month with the tenant gaining use of the garage.

On August 18, 2020, the parties attended a dispute resolution hearing before an arbitrator and the arbitrator concluded that the landlord established a monetary claim of \$11,500.00 for unpaid affected rent during the specified period of March 18, 2020 and August 17, 2020. No repayment plan was provided to the tenant, so the application was dismissed with leave to reapply. In the decision, the arbitrator also cautioned the tenant that beginning with September 2020, the monthly rent will be due and payable in full. The file number of the previous decision is recorded on the cover page of this decision.

Text messages were sent back and forth between the parties commencing August 30<sup>th</sup>. The tenant first asks the landlord whether she can give September rent on September

7<sup>th</sup>. On September 5<sup>th</sup>, the landlord asks for the rent by September 7<sup>th</sup> or he will give her an eviction notice. The tenant agrees.

On September 8<sup>th</sup>, the landlord GK personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice was provided as evidence. The effective date stated on the notice is September 18, 2020. At the same time he served the notice, the landlord served the tenant with a notice of inspection to take place on September 12<sup>th</sup> between 10 a.m. and 12 p.m.

On September 11<sup>th</sup>, the tenant texted back:

*I have calculated my expenses over the past couple of days and I still feel that I can't afford to move and rent a new place. If we can come to a deal that I don't have to pay the rent I owe you, I will have money to move out but if otherwise I will need to apply for the dispute resolution and wait for another couple of months until the hearing. If you accept, I will move out within 10 days.*

The landlord didn't agree to the proposal and came to inspect the unit on Saturday, September 12<sup>th</sup>. The landlord testified that at this time, the neighbours told him that they saw the tenant with a moving truck come and move out the previous day. The landlord testified the neighbours provided written statements, however I could not locate them in the landlord's evidence package.

The landlord testified the tenant abandoned the rental unit some time prior to September 12<sup>th</sup> and provided photographs taken on that day to corroborate their position that the tenant abandoned the property. The landlord changed the locks to the rental unit on September 15<sup>th</sup>. While doing so, the tenant drove by and argued with the landlord stating that the tenancy is not over and that she did not abandon the unit. Police were called and the tenant was told to leave the property.

On September 16<sup>th</sup>, the landlord texted and emailed the tenant advising her she could return to the rental unit to retrieve her belongings from the abandoned property by September 18<sup>th</sup>. The landlord submits that the tenant has registered a change of address form with Canada Post as further evidence of the tenant vacating the rental unit. A copy of the mail forwarding notice from Canada Post was provided as evidence.

The tenant gave the following testimony. At the commencement of the tenancy, the landlord did not do a condition inspection report with her. The tenant submits that the "before" pictures taken weren't done at the beginning of the tenancy and might have been taken after the locks were changed.

The tenant submits that she didn't vacate the property prior to September 12<sup>th</sup>, that the photos taken by the landlord on that date were staged to make it look like she had essentially moved out. She didn't abandon the rental unit. She tried to call the landlord after September 12<sup>th</sup>, but the landlord never picked up. She still had possessions inside which are probably damaged by the landlord. The tenant believes the landlord may have sold her possessions off.

After the confrontation with the landlord on September 15<sup>th</sup>, the tenant was told by the police not to go back to the rental unit for her and her family's safety. The tenant did not provide any documentary evidence to support this statement.

The reason the tenant got the mail forwarding service from Canada Post was because she didn't want harassment from the landlord. The landlord attended the rental unit, stressing her out, despite her request that she be served with documents by having them sent by registered mail or put in the mailslot. The tenant cites the service of the notice to end tenancy personally served upon her on September 8<sup>th</sup> as an example of this. Despite the landlord agreeing to put the notice in her mailbox, the landlord insisted on personally serving her, which the tenant describes as dangerous because it was done in the evening.

The tenant acknowledged she did not pay the \$2,700.00 rent on September 1<sup>st</sup> or anytime thereafter. The tenant testified that she told the landlord that she could pay later.

### Analysis

I find the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent on September 8, 2020 in accordance with sections 88 and 90 of the Act. She applied to dispute the notice on September 12, 2020. Section 46(4) of the Act states: 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. I find the tenant applied to dispute the notice within the 5 days as required.

Section 26 states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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. Given the evidence before me, I do not find the tenant had any right to deduct any

portion of the rent and was required to pay the September rent in full when it was due, on September 1, 2020.

Counsel for the landlord submits that the filing of the tenant's application to dispute the notice was an attempt to delay the eviction. I find I agree with counsel's assessment, turning to the tenant's text message of September 11<sup>th</sup>:

*I have calculated my expenses over the past couple of days and I still feel that I can't afford to move and rent a new place. If we can come to a deal that I don't have to pay the rent I owe you, I will have money to move out but if **otherwise I will need to apply for the dispute resolution and wait for another couple of months until the hearing.** If you accept, I will move out within 10 days. (emphasis added)*

The tenant is clear in her reasoning for filing the application, that is, to remain in the rental unit while awaiting the hearing and thereby delaying the eviction.

I am further satisfied, based on the tenant's clear and unequivocal testimony that she did not pay rent for September on September 1<sup>st</sup>, when it was due or anytime thereafter. Although the tenant filed her application to dispute the notice and provided testimony that she asked the landlord to give her more time to pay, the landlord was under no obligation to do so. I find the landlord acted in accordance with the Act when he served the tenant with the 10 Day Notice on September 8<sup>th</sup> stating the tenant failed to pay the \$2,700.00 rent. I find the tenant is in breach of section 26 of the Act.

The tenant's application seeking to cancel the notice to end tenancy for unpaid rent is dismissed without leave to reapply.

Section 55 states that 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 have reviewed the notice to end tenancy and I find it complies with the form and content provisions as stated in section 52. The landlord is entitled to an order of possession. As the effective date on the notice has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenant.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

At the commencement of the hearing, I advised the parties that the landlord's application would be adjourned to be reconvened at a later date. I make the following orders:

- **I order** the hearing of the landlord's application will be reconvened on the date identified in the Notice of Hearing documents attached to this decision;
- **I order** that this not an opportunity for the landlord to amend his Application for Dispute Resolution to include any additional claims;
- **I order** that this not an opportunity for the tenant to submit a further Application for Dispute Resolution to be crossed with the landlord's Applications for Dispute Resolution.
- **I order** that no new evidence is to be provided for the reconvened hearing by either party.

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 23, 2020

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Residential Tenancy Branch