



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LRE, CNR (Tenant)  
OPRM-DR, OPR-DR, FFL (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application September 18, 2020 (the "Tenant's Application"). The Tenant applied as follows:

- To suspend or set conditions on the landlord's right to enter the rental unit; and
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord filed the application September 24, 2020 (the "Landlord's Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 08, 2020 (the "10 Day Notice");
- To recover unpaid rent; and
- To recover the filing fee.

At first, Z.K. attended the hearing for the Tenant. Q.W. and S.M. attended the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

In relation to the Tenant's Application, and pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told Z.K. I would deal with the dispute of the 10 Day Notice and dismiss the request to suspend or set conditions on the landlord's right to enter the rental unit with leave to re-apply given it is not sufficiently related to the dispute of the 10

Day Notice. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

Q.W. confirmed receipt of the hearing package for the Tenant’s Application. Q.W. testified that the Landlord did not receive the Tenant’s evidence.

Z.K. testified that the Tenant received the hearing package for the Landlord’s Application and the Landlord’s evidence. Z.K. did not know when these were received. Z.K. had said at the outset that the Tenant was seeking an adjournment of the hearing. I told Z.K. the timing of receipt of the hearing package and Landlord’s evidence would impact my decision about an adjournment and asked if Z.K. wanted to get the Tenant to call into the hearing to provide this information. Z.K. did have the Tenant call into the hearing.

Q.W. testified that the hearing package for the Landlord’s Application was posted to the door of the rental unit September 29, 2020. Q.W. testified that the Landlord’s evidence was sent to the Tenant October 26, 2020.

The Tenant testified that she received the Landlord’s evidence October 26, 2020. The Tenant could not confirm that she received the hearing package for the Landlord’s Application.

I heard the parties on the adjournment request.

Z.K. made the following submissions. The Tenant has difficulty getting papers together given a disorder. He wants to go through and get her documents together to submit so the Tenant has an opportunity to properly defend herself. He has been asking the Tenant about getting documents together, but the Tenant is unable to deal with this issue. He has not had an opportunity to get her documents together because he had health issues and has a family.

Q.W. did not agree to an adjournment.

I considered rule 7.9 of the Rules and the criteria for an adjournment. I did not allow an adjournment for the following reasons. This matter started with the Tenant’s Application which was filed almost two months ago. The issue before me is unpaid rent which is a

straightforward issue. Z.K. was listed on the Tenant's Application and therefore involved in this matter at that time. The Tenant and Z.K. have had almost two months to get documents together and submit them which I find to be sufficient time. If the Tenant was unable to get documents together and submit them herself, she should have sought assistance on September 18, 2020. If Z.K. was too busy to assist the Tenant, the Tenant should have sought assistance from someone else. It would be prejudicial to the Landlord to adjourn this hearing given the Landlord is seeking an end to this tenancy and therefore this is a high-priority hearing which should not be delayed further.

I told the parties we would be proceeding with the hearing.

I told the parties I had some concerns about service which would be addressed in my written decision.

Q.W. confirmed receipt of the hearing package for the Tenant's Application and therefore I will consider the Tenant's Application. Q.W. testified that the Landlord did not receive the Tenant's evidence. There is no documentary evidence before me showing the Tenant's evidence was served on the Landlord as required by rule 3.14 and 3.15 of the Rules. Therefore, I am not satisfied the Tenant's evidence was served on the Landlord. Pursuant to rule 3.17 of the Rules, I exclude the Tenant's evidence as I find it would be unfair to consider evidence the Landlord has not seen and cannot comment on. I note that the Tenant's evidence would not have changed the outcome of this decision.

Q.W. testified that the hearing package for the Landlord's Application was posted to the door of the rental unit September 29, 2020. Z.K. testified that the Tenant received the hearing package. The Tenant could not confirm receipt of this. I have reviewed the Landlord's evidence and do not see documentary evidence to support service of the hearing package. Further, the hearing package had to be served in accordance with section 89(1) of the *Act* as the Landlord is seeking to recover unpaid rent. Posting the hearing package to the door of the rental unit does not comply with section 89(1) of the *Act*. In the circumstances, I am not satisfied the hearing package was served on the Tenant September 29, 2020 and am not satisfied it was served in accordance with the *Act*.

However, the Notice of Dispute Resolution Proceeding for the Landlord's Application is included in the evidence package which the Tenant acknowledged receiving October 26, 2020. Therefore, I am satisfied the Tenant received the Notice of Dispute

Resolution Proceeding 18 days before the hearing. Although this timing does not comply with rule 3.1 of the Rules, I am satisfied it was sufficient in these particular circumstances for the following reasons. The Tenant filed the Tenant's Application September 18, 2020 and therefore was aware of the hearing date and should have been preparing for the hearing as of September 18, 2020. The Tenant disputed the 10 Day Notice which raises the same issues raised on the Landlord's Application, namely whether the 10 Day Notice is valid and whether the Tenant failed to pay rent. In my view, the Landlord's Application raises issues related to the issues raised on the Tenant's Application and therefore I do not find the Tenant is prejudiced by the receipt of the Notice of Dispute Resolution Proceeding 18 days before the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

Tenant's Application:

1. Should the 10 Day Notice be cancelled?

Landlord's Application:

1. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 01, 2014 and is a month-to-month tenancy. Rent set out in the tenancy agreement was \$1,015.00. Although it is not clear from the wording, it is my understanding rent is due by the first day of each month. The Tenant paid a \$507.50 security deposit.

The tenancy agreement states as follows. The Landlord has entered into an agreement with BC Housing in relation to the rental unit. That rent supplements or subsidies apply. Term 9(b) of the tenancy agreement states:

For the purpose of setting the amount of the Tenant Rent Contribution and the amount of the rent supplement or subsidy, if any, the tenant agrees to declare, at times the landlord determines, the income and assets of all residents in the rental unit who are 19 years or older, and to provide proof of such income and assets in a form that the landlord requires.

The tenancy agreement states that the Tenant will be responsible for paying full current market rent if they fail to fulfill their obligations in relation to the rent subsidy.

The Landlord sought to keep the security deposit towards unpaid rent.

The 10 Day Notice states the Tenant failed to pay \$752.50 in rent due September 01, 2020. It is addressed to the Tenant and refers to the rental unit. It is signed and dated by S.M. It has an effective date of September 24, 2020. Z.K. did not take issue with the form or content of the 10 Day Notice when asked.

Q.W. testified that the 10 Day Notice was posted to the door of the rental unit and sent by registered mail September 08, 2020. The Tenant acknowledged receiving the 10 Day Notice September 08, 2020 posted to the door of the rental unit.

Q.W. confirmed the following summary of the Landlord's written submissions. The Tenant's rent is based on income. The Tenant was required to provide the Landlord documents related to income. The requirement to provide documents is set out in the tenancy agreement. The Tenant did not provide the required documents. Rent was therefore increased to market value April 01, 2020, which was \$1,402.50. The Tenant has only paid \$650.00 each month since April 01, 2020. Currently, \$6,020.00 in rent is outstanding. The Tenant failed to pay \$752.50 of September rent and the 10 Day Notice was issued based on this.

The Tenant agreed her rent is based on income, she was required to provide the Landlord documents related to income and that the requirement to provide documents is set out in the tenancy agreement. The Tenant testified that she did provide the Landlord the required documents. The Tenant testified that she received notice April 02, 2020 that her rent was increasing to \$1,402.50. The Tenant agreed she has only paid \$650.00 in rent each month since April 01, 2020.

Z.K. confirmed the only basis for the Tenant's dispute of the 10 Day Notice is that she provided the required income documents to the Landlord. The Tenant disagreed with

the Landlord's position about what documents were required. The Tenant could not point to support for her position about what documents were not required.

In relation to the 10 Day Notice, the Tenant acknowledged she did not pay the outstanding amount. The Tenant agreed she disputed the 10 Day Notice September 18, 2020. I asked the Tenant why she disputed the 10 Day Notice late. The Tenant made a derogatory comment about herself. The Tenant also said Q.W. had been hounding her.

Q.W. submitted that the RTB cannot judge the increase in rent to \$1,402.50 because the housing is exempt from the rent increase provisions of the *Act*. Q.W. submitted that the rent increase to \$1,402.50 is valid and cannot be disputed.

Q.W. sought an Order of Possession effective at the end of November.

The Landlord provided written submissions which state that the Landlord informed the Tenant in writing on April 02, 2020 that the rent was increased to \$1,402.50 as of April 01, 2020.

### Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for...loss that results.

Section 26(1) of the *Act* states:

26 (1) 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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- 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.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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...

The main issue between the parties was whether the Tenant provided the required documents to the Landlord in relation to a rent subsidy.

Section 2 of the *Residential Tenancy Regulation* (the "*Regulations*") states:

2 Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [assignment and subletting, rent increases] if the rent of the units is related to the tenant's income...

(g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:

- (i) the government of British Columbia;
- (ii) the British Columbia Housing Management Commission;
- (iii) the Canada Mortgage and Housing Corporation;
- (iv) a municipality;
- (v) a regional district;

I am satisfied based on the written submissions of the Landlord, written tenancy agreement and testimony of the parties that the above applies to this tenancy.

Here, the issue is why the Landlord increased the rent to \$1,402.50. I am satisfied that to decide this issue would be to decide the validity of the increase which would be contrary to section 2 of the *Regulations*.

I also note that I am not satisfied the Tenant did provide the Landlord the required documents as the Landlord has provided a copy of the documents received which, for the most part, support their position and the Tenant has not submitted compelling evidence showing she did provide the required documents.

Given the above, I am satisfied rent was \$1,402.50 due on the first day of each month as of May 01, 2020. I am not satisfied rent was \$1,402.50 as of April 01, 2020 because both parties agree the Landlord only notified the Tenant of the new rent amount April 02, 2020. The Tenant cannot be expected to have paid the new rent amount before she was notified of the new rent amount.

I am satisfied the Tenant did not have authority under the *Act* to withhold rent for September. I find the Tenant was required to pay \$1,402.50 by September 01, 2020 pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I am satisfied the Tenant failed to pay \$752.50 of September rent as the Tenant acknowledged this. Given the Tenant did not pay rent as required, the Landlord was entitled to serve her with the 10 Day Notice.



There is no issue that the Tenant received the 10 Day Notice September 08, 2020 as the Tenant acknowledged this.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. The Tenant did not dispute this.

The Tenant had five days from receipt of the 10 Day Notice on September 08, 2020 to pay or dispute it pursuant to section 46(4) of the *Act*. The fifth day fell on a Sunday and therefore the Tenant had until September 14, 2020 to pay or dispute the 10 Day Notice.

There is no issue that the Tenant did not pay the outstanding rent by September 14, 2020 as the Tenant acknowledged this.

The Tenant disputed the 10 Day Notice September 18, 2020, past the deadline for disputing it. The Tenant did not seek more time to file the dispute on the Tenant's Application and therefore I decline to extend the time. Further, the Tenant did not provide a compelling reason, or compelling evidence to support a reason, for disputing the 10 Day Notice late. In the circumstances, the Tenant's dispute of the 10 Day Notice is dismissed without leave to re-apply.

Given the Tenant did not pay or dispute the 10 Day Notice by September 14, 2020, the Tenant is conclusively presumed to have accepted that the tenancy ended September 24, 2020, the effective date of the 10 Day Notice, pursuant to section 46(5)(a) of the *Act*. Pursuant to section 46(5)(b) of the *Act*, the Tenant was required to vacate the rental unit by September 24, 2020.

Given the above, the Landlord is entitled to an Order of Possession pursuant to sections 55(1) and 55(2)(b) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on November 30, 2020.

In relation to unpaid rent, I am satisfied the Tenant failed to pay \$752.50 of rent from May to November as the Tenant agreed she only paid \$650.00 in rent each month since April of 2020. I am not satisfied the Tenant had authority under the *Act* to withhold rent. Therefore, the Tenant owes the Landlord \$5,267.50 in rent.

As the Landlord was successful in their application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant owes the Landlord \$5,367.50. The Landlord can keep the \$507.50 security deposit towards this amount pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$4,860.00 pursuant to section 67 of the *Act*.

I acknowledge that some of the outstanding rent is “affected rent” as that term is defined in the *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*. I also acknowledge that repayment plans apply to “affected rent” when a landlord seeks to end a tenancy for unpaid “affected rent”. However, here, the tenancy is ending based on September rent which is not “affected rent”. Given the tenancy is ending, all outstanding rent becomes due.

### Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on November 30, 2020. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$5,367.50. The Landlord can keep the \$507.50 security deposit. The Landlord is issued a Monetary Order for the remaining \$4,860.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 18, 2020

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Residential Tenancy Branch