



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, RR, LRE, RP, PSF, OLC, AAT, LAT, AS,  
(Tenant's Application filed September 8, 2020)  
CNC (Tenant's Application filed September 25, 2020)  
OPR-DR-PP, OPRM-DR, FFL (Landlord's Application filed  
September 8, 2020)

### Introduction

This hearing convened as a result of three separate applications which were scheduled to be heard together.

In the Tenant's Application filed September 8, 2020 she sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on \* (the "Notice");
- monetary compensation from the Landlord;
- an Order for a rent reduction;
- an Order restricting the Landlords' right to enter the rental unit;
- an Order that the Landlord:
  - make repairs, emergency and otherwise to the rental unit;
  - provide services or facilities as required by law;
  - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
- an Order for access to the rental unit for the Tenant and her guests;
- an Order permitting the Tenant to change the locks on the rental unit; and
- an Order that the Tenant be permitted to assign her tenancy.

In the Tenant's Application, filed on September 25, 2020, she sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued on September 10, 2020 (the "1 Month Notice") .

In the Landlord's Application, filed on September 8, 2020, he sought an Order of Possession and monetary compensation based on the 10 Day Notice as well as recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on October 29, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

*Preliminary Matter—Matters to be Determined*

The parties attended a hearing before the Residential Tenancy Branch on October 1 and 16, 2020. Pursuant to the Decision rendered on October 16, 2020, the Landlord was granted a Monetary Order in the amount of \$11,450.00. This included unpaid rent from April 2020 to October 2020.

In the hearing before me the Landlord sought monetary compensation pursuant to the 10 Day Notice which included rent outstanding for September 2020. As the October 16, 2020 Decision provided for compensation for April through October 2020, the Landlord has already been granted a Monetary Order for the September rent. I therefore decline to consider this request on the basis of the legal principle of *Res Judicata*, as this matter has already been decided.

Similarly, the Tenant's request for an Order restricting the Landlord's right to enter the rental unit pursuant to sections 29 and 70 of the *Residential Tenancy Act*, were also decided in the October 16, 2020 Decision. *Res Judicata* prohibits me from considering matters which have already been decided by the Residential Tenancy Branch. As such, I decline to consider this request.

In terms of the balance of relief sought by the parties I make the following findings.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

*Residential Tenancy Branch Rule of Procedure 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the 10 Day Notice and the validity of the 1 Month Notice. I also find that these claims are not sufficiently related to the Tenant's monetary claim or her claim for a rent reduction; accordingly I exercise my discretion and dismiss these claims with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly those claims are dismissed without leave to reapply.

#### Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. Should the 1 Month Notice be cancelled?
3. If either Notice is upheld, is the Landlord entitled to an Order of Possession?
4. Should the Landlord recover the filing fee?

#### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified as follows. The tenancy began August 19, 2018. Monthly rent is \$2,050.00.

The Landlord testified that the Tenant did not pay rent from April to August 2020.

On August 18, 2020, the Landlord issued a Rent Repayment Plan providing that the Tenant was to pay \$1,025.00 per month towards the arrears in addition to the monthly rent of \$2,050.00.

In the October 16, 2020 Decision, the Arbitrator found that the Tenant defaulted on the Repayment Plan and all affected rent, in the amount of \$10,250.00. The Arbitrator further found that the amount was immediately due and payable.

The Landlord issued the 10 Day Notice on September 2, 2020. The Notice informed the Tenant that she had five days in which to pay the outstanding rent or apply for Dispute Resolution. The Landlord testified that the Tenant paid her September rent on October 5, 2020. The Landlord confirmed that the Tenant has not paid anything towards the arrears nor has she paid anything for the October 2020 rent.

The Landlord issued the 1 Month Notice on September 10, 2020. The reasons set forth in the 1 Month Notice were as follows:

- the Tenant is repeatedly late paying rent;
- the Tenant or a person permitted on the residential property by the Tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- Breach of a material term that was not corrected within a reasonable time after written notice to do so;
- the Tenant has assigned or sublet the rental unit/site without the landlord's written consent;

In terms of the breach, the Landlord stated that the Tenant was without property insurance for a period of time. The Landlord also testified that the Tenant rented out, or sublet her rental unit on a short term basis through AirBnB. The Landlord stated that

the Tenant has received three separate complaints from the Strata due to her operating an AirBnB in her rental unit. The Landlord stated

The Tenant testified as follows.

The Tenant confirmed that she did not pay rent from April to August 2020. The Tenant stated that she received the Repayment Plan on August 25 or August 27. The Tenant also acknowledged that the Landlord has a judgment against her in the amount of approximately \$11,000.00 through the Residential Tenancy Branch.

The Tenant stated that she paid her September rent in two installments; firstly she paid \$250.00 on September 10, 2020; then she paid the balance of \$1,850.00 on October 1 or 2. She stated that she has not paid the October rent.

The Tenant claimed that she has been waiting for government funding to help her pay the outstanding rent.

In terms of the allegations noted on the Notice, the Tenant stated that she advertised her property on AirBnB, although she never rented it out. In support, she provided evidence from AirBnB confirming that she did not have any bookings. The Tenant denied subletting her rental unit to others.

### Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I find that the Tenant was obligated to pay monthly rent in the amount of \$2,050.00. The undisputed evidence before me is that the Tenant failed to pay rent from April to August 2020. During this time period, the Landlord was prohibited from issuing a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to section 46 of the *Act*.

The evidence confirms the Landlord complied with *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* by issuing a repayment plan to the Tenant. The evidence further confirms the Tenant failed to make the installments as required.

The evidence further establishes that the Tenant failed to pay the September rent when due. As this rent was outside the “specified period” of March 18, 2020 to August 17, 2020, the Landlord was, at that time, permitted to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46; the relevant portions of that section provide as follows:

**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

The Tenant testified that she paid her September rent in two installments: \$250.00 on September 10, 2020 and \$1,850.00 on October 1 or 2. I find that the Tenant did not pay the September rent within the five days required by section 46(4).

While the Tenant applied to dispute the Notice, she did not argue that the Notice was flawed in any way, nor did she allege she had a legal right to withhold the September rent.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

**Rules about payment and non-payment of rent**

**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.

As also discussed during the hearing, there are only four occasions, permitted under the *Residential Tenancy Act*, where a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

None of the above exceptions apply in the case before me; as such, I find that the Tenant had no legal authority to withhold her September rent.

Although the Landlord obtained a Monetary Order for unpaid rent, this does not preclude the Landlord from seeking an Order of Possession pursuant to section 46 of the *Act*.

In all the circumstances, I dismiss the Tenants' claim for an Order canceling the 10 Day Notice. The tenancy shall end in accordance with the 10 Day Notice.

I have reviewed the 10 Day Notice and find it complies with section 52 of the *Act*; accordingly, the Landlord is granted an Order of Possession pursuant to section 55. The Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court.

As I have ended the tenancy pursuant to section 46 for nonpayment of rent, it is not necessary that I consider the merits of the 1 Month Notice to End Tenancy for Cause. The Tenant's request that I cancel the 1 Month Notice is therefore dismissed.

### Conclusion

The Tenant's request for an Order canceling the 10 Day Notice is dismissed without leave to reapply. The tenancy shall end in accordance with the 10 Day Notice.

The Tenant's monetary claim and request for a rent reduction is dismissed with leave to reapply.

As the tenancy is ending, the balance of the Tenant's claims for the following are dismissed without leave to reapply:

- an Order canceling the 1 Month Notice;
- an Order restricting the Landlords' right to enter the rental unit;
- an Order that the Landlord:
  - make repairs, emergency and otherwise to the rental unit;
  - provide services or facilities as required by law;
  - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
- an Order for access to the rental unit for the Tenant and her guests;
- an Order permitting the Tenant to change the locks on the rental unit; and
- an Order that the Tenant be permitted to assign her tenancy.

I decline to hear the Tenant's request for an Order restricting the Landlords' right to enter the rental unit as that matter was previously decided on October 16, 2020.

The Landlord's request for an Order of Possession based on the 10 Day Notice is granted.

I decline to hear the Landlord's request for monetary compensation from the Tenant for unpaid rent for September 2020 as that matter was previously decided on October 16, 2020.

The Landlord's request to recover the filing fee is granted. The Landlord is granted a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: November 4, 2020

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Residential Tenancy Branch