



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **LL OPRM-DR, OPR-DR, FFL**  
                             **TT: CNR-MT**

### Introduction

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

The landlords applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- cancellation of the 10 Day Notice pursuant to section 46.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their agents.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed additional rent has come due and the total amount of arrear as of the date of

the hearing is \$4,500.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due over time is reasonably foreseeable, I amend the landlords' Application to increase the landlords' monetary claim from \$1,500.00 to \$4,500.00.

#### Issue(s) to be Decided

Is the tenant entitled to more time to file their application?

Should the 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenant?

#### Background and Evidence

The parties agree on the following facts. This periodic tenancy began in August 2020 when the landlords purchased the rental property and assumed the tenancy from the previous owners of the property. The parties signed and entered into a new tenancy agreement dated August 9, 2020. The tenancy agreement provides that rent in the amount of \$1,500.00 is payable by the first of each month. A security deposit of \$750.00 was collected and is still held by the landlords. The tenant continues to reside in the rental unit.

The tenant failed to pay rent for the month of September and the landlords issued a 10 Day Notice dated September 2, 2020 indicating an arrear of \$1,500.00. The landlord testified that the 10 Day Notice was posted on the rental unit door on that date. The tenant filed an application to dispute the 10 Day Notice on September 10, 2020, and testified that they were "not home and did not receive the notice on the door until Sept 9 2020".

The tenant submits that prior to the issuance of the 10 Day Notice the parties were negotiating an end of the tenancy and they were informed by the landlords that September rent was not payable. The tenant submitted into evidence correspondence from the landlord dated September 16, 2020 wherein the landlords offer to forgive the unpaid rent for August and September, 2020 provided that the tenant agree to end the tenancy and vacate by September 30, 2020. The tenant testified that this was the only correspondence received from the landlords and that they were not aware that the offer was no longer valid.

The parties agree that the tenant has failed to pay rent in the amount of \$1,500.00 for the months of September, October and November, 2020. The landlord testified that the rental arrear as of the date of the hearing is \$4,500.00.

The tenant gave some submissions regarding their dissatisfaction with the condition of the rental unit and the conduct of the landlords and their agents.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 46(4) of the *Act* provides that a tenant may dispute a 10 Day Notice within 5 days after the date the tenant receives the notice. Section 46(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present case the parties agree that the 10 Day Notice was posted on the rental unit door on September 2, 2020. Pursuant to section 90(c) of the *Act*, a document that is served by attaching a copy to a door is deemed served 3 days after posting. Accordingly, I find that the 10 Day Notice is deemed served on September 5, 2020.

Pursuant to section 46(4) the tenant had 5 days from the date of deemed service to either file their application to dispute the notice or pay the arrear in full. The tenant filed their application on September 10, 2020, within the 5 days granted under the *Act*. Therefore, I find that an extension of time is not necessary.

When a tenant applies to dispute a notice to end tenancy the evidentiary onus shifts to the landlord to demonstrate on a balance of probabilities that the tenancy should end for the reasons provided.

I am satisfied with the undisputed evidence of the parties that there is a valid tenancy agreement providing that the tenant is obligated to pay monthly rent in the amount of

\$1,500.00 by the first of each month. I accept the undisputed evidence of the parties that the tenant failed to pay rent for September 1, 2020 as required.

I find that the tenant is not a credible witness. Their assertion that there was an agreement between the parties that rent for September was forgiven is not supported in the documentary evidence. The correspondence submitted, the only correspondence according to the tenant's testimony, is dated considerably after the date rent was due and the 10 Day Notice was issued. While the landlords offer to waive their right to the rent for September 2020 in that correspondence the offer is clearly conditional on the tenant vacating the rental unit by the end of that month. The tenant's own testimony, that they were told rent was not payable prior to the issuance of the 10 Day Notice is directly contradicted by their own documentary evidence.

There is little evidence, beyond the unsupported oral submission of the tenant, that there was ever an agreement between the parties where the tenant was not required to pay rent. I find the various grievances of the tenant to be unsupported in any documentary evidence and have little air of reality. In any event, pursuant to section 26(1) of the *Act*, a tenant must pay rent whether or not the landlord complies with the *Act*, regulations or tenancy agreement.

I find that the tenant was obligated to pay rent in full on September 1, 2020 pursuant to the tenancy agreement. I accept the evidence of the parties that the tenant failed to do so nor have they made any payment after the issuance of the 10 Day Notice. Accordingly, I dismiss the tenant's application.

I find the landlord's 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent, provides the rental unit address, and clearly indicates the reason for the tenancy to end. As such I issue an Order of Possession in the landlords' favour. As the effective date of the notice has passed I issue an Order enforceable 2 days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that rent for this tenancy is \$1,500.00. I accept the evidence of both parties that the tenant has failed to pay rent for the months of September, October and November, 2020. I accept the landlord's submission that the total rental arrear as at November 3, 2020, the date of the hearing is \$4,500.00 and I issue a monetary award in that amount.

As the landlords were successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's full security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$3,850.00. The tenant must be served with this Order as soon as possible. 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.

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 3, 2020

---

Residential Tenancy Branch