



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0706614 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR, FFL, CNR, OLC, RP, LRE, FFT

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the other party was served with the notice of hearing package and the submitted documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant's application was clarified that she had inadvertently named the landlord's agent as the landlord instead of the company. On this basis, both parties confirmed and agreed that the tenant's application can be amended to reflect the proper named landlord.

The tenant also confirmed that her requests for the below issues were unrelated to the tenant's application to cancel the 10 Day Notice for Unpaid Rent.

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Pursuant to Rules of Procedure 2.3, regarding unrelated items, the tenant's additional requests were dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 1, 2019 on a fixed term tenancy ending on September 30, 2020 as per the submitted copy of the signed tenancy agreement dated September 30, 2019. The monthly rent is \$1,400.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$700.00 was paid.

The landlord seeks an order of possession and an amended and clarified monetary claim for unpaid rent of \$4,300.00 which consists of:

\$1,400.00	Unpaid Rent, September 2020
\$1,400.00	Unpaid Rent, October 2020
\$1,400.00	Unpaid Rent, November 2020
\$100.00	Filing Fee

Both parties confirmed the landlord served the tenant with a 10 Day Notice dated September 5, 2020 in person on September 5, 2020. The 10 Day Notice sets out that the tenant failed to pay rent of \$1,400.00 that was due on September 1, 2020 and an effective end of tenancy date of September 15, 2020.

The landlord stated that the tenant has not paid all of the rent for September, October and now November 2020.

The tenant confirmed that rent for the 3 months claimed by the landlord were unpaid. The tenant stated that she “did not pay” the rent. The tenant argued that she had withheld the rent in dispute of the landlord’s lack inaction in making emergency repairs. The tenant argued that the landlord was notified of a major ceiling leak as a tree had fell on the roof and made no effort to make repairs. The landlord disputes the tenant’s claims arguing at no time has the tenant given notice of a need for emergency repairs. The tenant referenced a text message sent to the landlord in which he was informed of the issue. The tenant was unable to provide any proof of notification. The landlord also referred to a responding text message in which the landlord attempted to schedule entry with the tenant to attend and inspect the damage. The landlord further argued that the text messages show that despite repeated attempts by the landlord to schedule a date as soon as possible the tenant refused access to the landlord and a contractor. The tenant argued that the landlord was not allowed to inspect the ceiling and that the contractor was free to attend. The tenant argued that the landlord was familiar with the ceiling of the rental unit and it was not necessary to allow him access. The tenant also confirmed that no actual emergency repairs were made. The tenant citing that she could not afford it. The tenant confirmed that she does not have any orders from the Residential Tenancy Branch authorizing her to withhold rent for emergency repairs.

## Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find that as both parties have confirmed that the landlord served the tenant with the 10 Day Notice dated September 5, 2020 that the tenant is deemed properly served.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Despite the tenant confirming that she “did not pay” rent as claimed by the landlord the tenant has argued that she had a right to withhold the rent due to emergency repairs.

In this case, the tenant has claimed that the landlord was notified of the issue of emergency repairs. The landlord has disputed this claim and also argued that when he attempted to schedule a time to attend and inspect the ceiling for the emergency repair, the tenant refused access despite multiple attempts. The tenant did not provide any supporting evidence of notice to the landlord.

Section 33 of the Act speaks to Emergency Repairs. It states in part, a tenant may have emergency repairs made only when all of the following conditions are met.

- a) Emergency repairs are needed
- b) The tenant made atleast 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs
- c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs

Section 33 (5) also states:

A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, I find that the tenant's claim of a lawful right to withhold rent has not been established. The tenant did not give notice to the landlord allowing the landlord to determine if emergency repairs were needed; the tenant did not make any emergency repairs. On this basis, the tenant's application to cancel the 10 Day Notice is dismissed. The 10 Day Notice dated September 5, 2020 is upheld.

Pursuant to Section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

As for the landlord's monetary claim of unpaid rent totalling \$4,200.00 at \$1,400.00 per month. I find based upon the undisputed affirmed evidence of both parties that the landlord has established a claim for unpaid rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$4,300.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 04, 2020

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Residential Tenancy Branch