



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	For the tenant:	CNR-MT
	For the landlord:	OPRM-DR, OPR-DR-PP, FF

Introduction, Preliminary and Procedural Matters-

This hearing was scheduled originally in response to the tenant's application for dispute resolution under the Residential Tenancy Act (Act), filed on September 14, 2020, for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

On September 17, 2020, the landlord filed an ex-parte application via the Direct Request process for an order of possession of the rental unit and a monetary order, based upon an allegedly undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice).

On October 2, 2020, an adjudicator granted the landlord's application for the order of possession effective two days after service of the Order on the tenant and a monetary order for \$1,400, which was the outstanding rent deficiency for September 2020 and the filing fee of \$100.

On October 9, 2020, the tenant filed an application for review consideration of the October 2, 2020, Decision granted to the landlord.

In a Decision on October 21, 2020, another arbitrator determined that the landlord's application should have originally been joined with the tenant's application and heard together on November 6, 2020, at 11:00 a.m., Pacific Time. As a result, in that Decision of October 21, 2020, the other arbitrator accepted the tenant's Application for Review Consideration, suspended the original Decision and Orders of October 2, 2020, granted

by the adjudicator, and ordered that the landlord's application be joined with the tenant's application.

At this hearing, the tenant and the landlord's agent attended. The tenant said that his appearance was only a formality as he has paid in full the rent for September, October and November 2020.

The tenant said that he and the landlord have come to an agreement on a repayment plan for the rent deficiency accumulated from the months of April through August 2020.

The repayment plan was not filed into evidence.

In response to my inquiry, the landlord's agent agreed that the rent for September, October and November have been paid and that a repayment plan has been put in place, with the first payment due in December 2020. The parties confirmed that the repayment plan was on RTB form 14.

In response to my further inquiry, the landlord's agent asked that the Notice be withdrawn and both parties agreed it was no longer necessary to proceed on the merits of either application, with one exception.

The landlord's agent said the landlord has requested that their filing fee be paid by the tenant and the tenant submitted that he filed his application in time and that he should not be responsible for the landlord's filing fee.

I informed the parties I would make a decision on the landlord's request for the filing fee.

Analysis and Conclusion-

As to the respective applications, as both parties agreed that the issues in their applications have been resolved, apart from the landlord's request for the filing fee, I **accept their request to withdraw their applications**, apart from the landlord's claim for the filing fee.

I further find that the parties specifically agree that the Notice should be withdrawn.

I therefore set aside the original Decision, order of possession, and monetary order granted to the landlord on October 2, 2020. These Decision and Orders are void and of no force or effect.

As to the recovery of the filing fee, I heard evidence that the landlord served the tenant with the Notice by registered mail on September 6, 2020, and the tracking information shows the mail was delivered on September 9, 2020.

The tenant filed his application on September 14, 2020, but said he did serve the landlords until September 21, 2020.

The Notice mailed on September 6, 2020, to the tenant was deemed received on September 11, 2020, and from that date, the tenant had until September 16, 2020, to pay the monthly rent in full. The landlord made their application the next day, not yet having received the tenant's application for dispute resolution.

I therefore find the landlord is entitled to recover the cost of the filing fee of \$100.

I authorize the landlord to deduct the amount of \$100 from the tenant's security deposit to satisfy this monetary award, pursuant to section 72(2)(b).

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 6, 2020

Residential Tenancy Branch