



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR  
OPR-DR-PP, OPRM-DR, FFL

### Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was filed on October 14, 2020. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) issued October 8, 2020.

The Landlord’s Application for Dispute Resolution was made on November 5, 2020. The Landlord applied to enforce a 10-Day Notice to End Tenancy for Unpaid Rent dated February 17, 2020, for a monetary order for unpaid rent, and to recover their filing fee.

On November 27, 2020, a Decision, Order of Possession and Monetary Order were issued based on the Landlord’s above-noted application, thorough the direct request hearing (Ex Parte process). On November 30, 2020, the Tenant applied for a review consideration of the Decision and Orders issued on November 27, 2020. The Tenants application was granted, in the form of a correction to the original decision, setting aside the Decision, Order of Possession and Monetary Order due to an administrative oversight of the Residential Tenancy Branch. Pursuant to section 74 of the Act, it was ordered that a participatory hearing be held to consider both the Landlord’s and Tenant’s applications.

This Participatory Hearing decision should be read in conjunction with the Original decision dated November 27, 2020, the Review Consideration decision dated December 9, 2020, and the Corrected Decision date December 9, 2020.

The Landlord and the Tenant attended this hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### *Preliminary Matter – Tenant's Conduct*

During the hearing, the Tenant was cautioned several times regarding personal conduct, interruptions and argumentative behaviour towards this Arbitrator.

Both the parties to this dispute were advised of the expected appropriate conduct during these proceedings.

When the Tenant continued to interrupt these proceedings, the Tenant was again cautioned, and attempts were made to explain the legislation to the Tenant. The Tenant continued to disrupt these proceedings, and the Tenant's phone line was muted in order to obtain control of the proceedings.

The Tenant was invited back to these proceedings to offer testimony; however, due to the Tenant's continued disruptive behaviour to these proceedings, their phone line was again muted. During the fourth muting of the Tenant's phone line, the Tenant disconnected from this hearing and did not call back into these proceedings.

### Issues to be Decided

- Should the Notice to End Tenancy issued October 8, 2020 be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they served the 10-Day Notice to the Tenant on October 8, 2020, by posting the Notice to the front door of the rental unit. The 10-Day Notice listed an effective date of October 22, 2020, and an outstanding rent amount of \$3,832.00, consisting of unpaid rent for August 2020 of \$182.00, September 2020 rent of \$1,825.00 and October 2020 rent of \$1825.00.

The Landlord testified that in addition to not paying the rent as indicated on the Notice to end tenancy, the Tenant had also not paid the rent for November 2020, December 2020 and January 2021.

The Tenant testified that they moved out of the rental unit on November 30, 2020, leaving the keys to the rental unit on a counter inside the rental unit.

When asked by this Arbitrator what notice they provided to the Landlord that they would be moving out and not proceeding with their dispute of the Notice, the Tenant testified that when they received documents from the Landlord in late November 2020, they wrote on those documents that they would be moving out as of November 30, 2020, and personally gave the documents back to the Landlord.

The Landlord testified that they were not aware that the Tenant had moved out, that they had not to receive written notice from the Tenant to end their tenancy, nor had they received notice that the Tenant had cancelled their application to dispute the 10-Day Notice the Landlord had served.

The Tenant confirmed that they did not advise the Residential Tenancy Branch or the Landlord that they had intended to withdraw their application to dispute this Notice.

When this Arbitrator inquired why the Tenant had filed for a Review Consideration of the November 30, 2020 Decision and Orders, when they intended to move out; the Tenant testified that they only filed for review consideration as they needed more time to move out of the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement, and I find that these parties entered into a one-year fixed term tenancy that rolled into a month-to-month tenancy as of September 1, 2020, for an agreed upon rent of \$1,825.00 per month and that the Tenant had paid the Landlord a \$912.50 security deposit.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

#### ***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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (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.*

I find that the Tenant received a 10-Day notice for unpaid rent from the Landlord on October 12, 2020, three days after the Notice had been posted to the front door of the rental unit, and that the Tenant applied to dispute the Notice on October 14, 2020, within the legislated timeline.

I accept the undisputed testimony of the Landlord that the Tenant has not paid the outstanding rent, as stated on the 10-Day Notice within the required five days, nor have they paid the rent for November 2020, December 2020 and January 2021.

I have reviewed the Tenant's testimony and documentary evidence, and I find that the Tenant did not have permission from the Landlord to withhold the rent, nor had they paid for emergency repairs to the rental unit, or did they have an order from this office allowing them to withhold any portion of the rent. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

***Order of possession for the landlord***

***55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if***

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. Pursuant to section 55 of the Act, as I have already dismissed the Tenant's application to cancel the Notice, I must grant the Landlord an order of possession to the rental unit.

Therefore, I grant the Landlord an **Order of Possession** effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for August 2020, September 2020, October 2020, November 2020, December 2020 and January 2021, in the amount of \$9,307.00. I authorized the Landlord to retain the Tenant's security deposit in partial satisfaction of this award.

I acknowledged the Tenant's argument that they should not be responsible for the December 2020 and January 2021 rent as they moved out of the rental unit on November 30, 2020. However, I find the Tenant's argument on this matter to be unreasonable, as it was the Tenant who filed to dispute this Notice to end the Tenancy, it was the Tenant who filed to have an order of possession overturned, acknowledging in their written submissions for that review that they had a pending hearing to have the Notice to end tenancy cancelled. As the Tenant filed to dispute this Notice and successfully filed to have a previous decision and orders overturned to end this tenancy, I find that the Tenant was required to advise the Landlord in writing that they had changed their mind and decided to move out of the rental unit.

Additionally, I have reviewed all of the documentary evidence submitted by the Tenant, and I find that there is no evidence before me to support the Tenant's claim that they had given a notice to the Landlord to end their tenancy as of November 30, 2020, or that they had taken steps to cancel their dispute of the Landlord's notice issued on October 8, 2020.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their

application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

I grant the Landlord a Monetary Order in the amount of \$8,494.50, consisting of \$9,307.00 in unpaid rent and \$100.00 for the recovery of the filing fee, less the \$912.50 security deposit the Landlord is holding for this tenancy.

### Conclusion

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$8,494.50**. The Landlord is provided with this Order in the above terms, and 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: January 7, 2021

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Residential Tenancy Branch