



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the Landlord: OPR-DR-PP, OPRM-DR  
For the Tenant: CNR

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord filed a claim for:

- An Order of Possession, further to the Landlord having issued a 10 Day Notice to End Tenancy (with repayment plan) dated November 19, 2020 (“10 Day Notice”), because rent was not paid in the required time;
- a request for a monetary order of \$2,400.00 for outstanding unpaid rent from the Tenant.

The Tenant filed a claim for:

- an Order to cancel the 10 Day Notice dated November 19, 2020;
- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2021 (“February 10 Day Notice”).

The Tenant and two agents for the Landlord, C.P. and R.M. (the “Agents”), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy

Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Applications for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses in their Applications, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel a Notice to End Tenancy.

### Issue(s) to be Decided

- Should the 10 Day Notices be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what Amount?
- Is either Party entitled to recovery of their Application Filing Fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2019, with a monthly rent of \$375.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$187.50, and no pet damage deposit, and that the Landlord still holds the security deposit.

The Landlord served the Tenant with the 10 Day Notice, which was signed and dated November 19, 2020, and has the rental unit address. The 10 Day Notice was served by

being posted on the rental unit door on November 19, 2020. It has a corrected effective vacancy date of December 2, 2020. The 10 Day Notice was issued on the ground that the Tenant failed to pay rent of \$375.00 when it was due on October 1, 2020.

In the hearing, the Agents said that the Tenant has not paid any rent since he paid \$150.00 in November for that month's rent. They said the Tenant had not paid anything since March 2020. However, the Tenant said he signed an agreement with the Agents to pay \$150.00 for November 2020 rent, and to use the remainder to buy an air purifier, because he cannot open a window in his rental unit. The Tenant said that this was just discussed, and that there was nothing in writing about the air purifier. The Agents said they did not know about an air purifier arrangement.

The agreement to which the Tenant referred reads as follows:

November 4, 2020

Dear [Tenant],

On October 21<sup>st</sup>, 2020, you had a meeting with me, coordinator, and [R.], the safe and supportive housing manager. As per the meeting, you have agreed to pay \$150 for November 2020 rent to which was received, and in the later months the amount of \$600. The amount will cover both the rental arrears owed, and it will cover that month's rent.

As of this date, the rental arrears are \$2,850.00 dating from April 1<sup>st</sup>, 2020 to November 1<sup>st</sup>, 2020.

This is a [written] agreement to you to pay off the rental arrears that have accumulated to be paid on the 1<sup>st</sup> of every month until the rental arrears are paid off. If you need to make any adjustments to the payment plan such as increase or decrease for the following months, then please come speak to the coordinator to collaborate for the payment of the following month before the 1<sup>st</sup>.

Please sign this document stating that you are agreeing to pay the rental arrears owed.

X [signed by Tenant]

X [signed by Agent]

("November Agreement")

The Landlord also submitted a repayment plan in form #RTB-14, dated November 19, 2020 ("Repayment Plan"), in which they set out that the Tenant owed \$1,500.00 in

unpaid rent from April 2020 through July 2020. The Repayment Plan sets out that the Tenant will pay an additional \$300.00 for the arrears starting on January 1, 2021; however, the due dates listed for the repayment are January through June of **2020**, rather than 2021. Nevertheless, I find that it is reasonable to infer that this was written in error, as the Agent was not used to changing the year number when the Repayment Plan was drafted in November 2020. As a result, I find that this error was not fatal to the Repayment Plan and is without implication for this proceeding.

The Tenant said that despite the November Agreement, the Landlord would not accept his payment of \$600.00 in December, because he said they suddenly said they had made a mistake and the amount owing each month should be \$750.00. The Tenant said he usually paid rent by money order or more recently bank draft. When I asked him if he presented the Agents with a money order or bank draft for \$600.00, he said no, that he did not believe they would accept it. He said they kept telling him he owes \$750.00 a month, not \$600.00.

The Agents said that they did not have anything in writing before them that would require the Tenant to pay \$750.00, instead of \$600.00 per month, pursuant to the November Agreement.

The Landlord served the Tenant with the February 10 Day Notice that was signed and dated February 3, 2021, it was served by posting it to the rental unit door on February 3, 2021, it has an effective vacancy date of February 13, 2021, which is automatically corrected to February 16, 2021, pursuant to section 53 of the Act.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#### *Unpaid Rent Owing to the Landlord*

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The Tenant acknowledged that he has not paid rent since March 2020, and not for

December 2020 through February 2021. While the Tenant said the Landlord would not accept his payment of \$600.00, further to the November Agreement, he also said he did not try to pay them with a money order or bank draft, as he said he usually did. The Tenant said he did not pay the Landlord at all, nor did he attempt to pay the Landlord anything, beyond the \$150.00 payment in November 2020.

<b>Month</b>	<b>Amount Paid</b>	<b>Amount Outstanding</b>
April 2020	\$0.00	\$ 375.00
May 2020	\$0.00	\$ 375.00
June 2020	\$0.00	\$ 375.00
July 2020	\$0.00	\$ 375.00
August 2020	\$0.00	\$ 375.00
September 2020	\$0.00	\$ 375.00
October 2020	\$0.00	\$ 375.00
November 2020	\$150.00	\$ 0.00
December 2020	\$0.00	\$ 375.00
January 2021	\$0.00	\$ 375.00
February 2021	\$0.00	<u>\$ 375.00</u>
TOTAL		<u>\$3,750.00</u>

### **Rent due from April through August 2020**

As to the unpaid rent, the months of April, May, June, July, and August fell in the emergency period which began on March 18, 2020, in response the Covid-19 pandemic, as declared in the *Residential Tenancy (COVID-19) Order*, MO 89/2020 (*Emergency Program Act*), dated March 30, 2020. During this period, a landlord was not able to take action to collect unpaid rent from a tenant, or issue a 10 Day Notice to End Tenancy for Unpaid Rent, or any other Notice to end the tenancy.

On July 30, 2020, the *COVID-19 Regulation* ("Regulation") went into effect. This Regulation was made under the Emergency Program Act and set out that the emergency period began on March 18, 2020, and ended on the date on which the last extension of the declaration of the state of emergency made on March 18, 2020 expires or is cancelled. This Regulation can be accessed through:

[https://www.bclaws.ca/civix/document/id/crbc/crbc/195\\_2020](https://www.bclaws.ca/civix/document/id/crbc/crbc/195_2020)

Under this Regulation, the rent due under the tenancy agreement during this emergency period is known as the "affected rent".

Section 1.02 of the *COVID-19 Regulation* requires that a landlord **must** give the tenant a repayment plan, if the tenant has overdue affected rent charges and the landlord and tenant did not enter into a prior agreement. Section 1.03 provides the terms of a repayment plan. [emphasis added]

In connection with the Regulation, Residential Tenancy Policy Guideline # 52 (“PG #52”) was enacted. Under this Guideline, “affected rent” is defined as rent that become due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

In the case before me, I find that the Tenant owed the Landlord five months of affected rent in the amount of \$1,875.00. I find that the Tenant also owes the Landlord unpaid rent for September, October, and December of 2020, and January and February 2021. Accordingly, I award the Landlord with **\$1,875.00** for unpaid, affected rent from April through August 2020, pursuant to section 67 of the Act.

In terms of November 2020, I find that the November Agreement is not clearly written, in that it states that the Tenant has paid \$150.00 for November’s rent, and that in all other months, he will have to pay \$600.00 a month, including \$225.00 in repayment of arrears. However, the Repayment Plan has different financial requirements for the Tenant. The Repayment Plan dated November 19, 2020, requires the Tenant to pay an additional \$300.00 per month toward arrears, not \$225.00.

I find that the Landlord’s internally inconsistent evidence from the November Agreement and the Repayment Plan made it impossible for the Tenant to know what he was supposed to pay the Landlord. However, given his testimony in the hearing, I find that the Tenant expected to pay \$600.00 per month for rent and the installment payment toward arrears. As I have already awarded the Landlord with recovery of the affected rent, the remaining amount of unpaid rent is as follows:

First, I find that the November Agreement is written such that the Landlord has stated that the Tenant has already paid \$150.00 for that month and that subsequent months would include the payment toward arrears. As such, I find that the Tenant did not owe the Landlord any more for November 2020, but that he owes the Landlord the following amounts up to the hearing date:

September 2020	\$375.00
October 2020	\$375.00
December 2020	\$375.00

January 2021	\$375.00
February 2021	<u>\$375.00</u>
TOTAL	<u>\$1,875.00</u>

The total award for the Landlord is **\$3,750.00**.

Ongoing Tenancy

Section 46 (1) of the Act outlines the grounds on which a landlord may end a tenancy if rent is unpaid when it is due:

**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.

I find that the Tenant applied for dispute resolution within the five-day deadline of section 46(4). The Landlord served the Tenant with the 10 Day Notice on November 19, 2020, which was deemed served three days later on November 21, 2020, pursuant to section 90 of the Act. Accordingly, the Tenant had until November 27, 2020 to apply to dispute the 10 Day Notices, and he applied on November 24, 2020.

However, I find that the Tenant did not pay rent when it was due, contrary to section 26 of the Act. Accordingly, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for April 2020 through and including February 2021, other than \$150.00 in November 2020, I find that the **Order of Possession will be effective two days after service** of the Order on the Tenant.

Given their successful Application, I also award the Landlord recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act, for a total award of **\$3,850.00**.

I authorize the Landlord to retain the Tenant's security deposit of \$187.50 in partial

satisfaction of the award. I grant the Landlord a Monetary Order of **\$3,662.50**, which must be served on the Tenant, as soon as possible.

### Conclusion

The Landlord is successful in their claim for a Monetary Order from the Tenant for unpaid rent in 2020 and 2021 in the amount of \$3,750.00. The Landlord is also awarded recovery of the \$100.00 Application filing fee. The Landlord is authorized to retain the Tenant's security deposit of \$187.50 in partial satisfaction of the award. I grant the Landlord a Monetary Order of **\$3,662.50** for the remaining award owing.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 17, 2021

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Residential Tenancy Branch