



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CKL INVESTMENTS LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing dealt with cross-applications filed by the parties. On December 3, 2020, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On December 9, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. J.G. and A.G. attended the hearing as agents for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that she did not serve the Notice of Hearing package to the Landlord. Based on this undisputed testimony, as the Tenant did not serve this package in accordance with Section 89 of the *Act*, I dismiss the Tenant’s Application without leave to reapply.

She did advise that she served her evidence to the Landlord on January 19, 2021 by regular mail, and J.G. confirmed that the Landlord received this evidence. As such, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

J.G. advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on December 17, 2020, and the Tenant confirmed that she received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the

Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2018, that rent was established at an amount of \$1,500.00 per month, and that it was due on the first day of the month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that the Notice was served by hand on December 2, 2020. The Notice indicated that \$1,500.00 was owing for rent on December 1, 2020. The effective end date of the tenancy was noted on this Notice as December 12, 2020.

J.G. submitted that the Tenant did not pay any rent for December 2020. Thus, the Notice was served. The Tenant has not paid any rent for January 2021 or February

2021 either. The Tenant did not have any authorization to withhold any amount of rent from December 2020 onwards. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- December 2020 rent: \$1,500.00
- January 2021 rent: \$1,500.00
- February 2021 rent: \$1,500.00
- Total rental arrears: **\$4,500.00**

The Tenant advised that the COVID pandemic has affected many people negatively and that her rent money has been stuck in a trust account. Due to the pandemic, there have not been enough employees available to process payments to her from this trust. She provided an email as documentary evidence to corroborate this. She stated that she asked the Landlord about being charged late fees or being allowed to pay later via a promissory note, but the Landlord refused these options.

#### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant received the Notice on December 2, 2020. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on December 2, 2020, she must have paid the rent in full or disputed the Notice by December 7, 2020 at the latest. While the Tenant disputed the Notice within the five-day time frame, as she did not serve the Notice of Hearing package, I have dismissed her Application to dispute this Notice in its entirety.

Furthermore, I am satisfied from the evidence before me that the Tenant did not have a valid reason under the *Act* for withholding the rent. I am also satisfied that the Tenant did not have any authority under the *Act* for withholding the rent for December 2020, January 2021, and February 2021. As such, I find that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenant.

I also grant the Landlord a monetary award in the amount of **\$4,500.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears for December 2020	\$1,500.00

Rental arrears for January 2021	\$1,500.00
Rental arrears for February 2021	\$1,500.00
Filing Fee	\$100.00
Security deposit	-\$750.00
<b>Total Monetary Award</b>	<b>\$3,850.00</b>

### Conclusion

The Tenant's Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$3,850.00** 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: February 26, 2021

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Residential Tenancy Branch