



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1065423 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Landlords: OPRM-DR, OPR-DR-PP, FFL
Tenant: CNR, LRE, OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

KD (“landlord”). appeared for the landlords in this hearing, Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlords and tenant were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenant was personally served with the 10 Day Notice on February 8, 2021. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on February 8, 2021.

Although the landlords had applied for a monetary Order of \$4,600.00 in their initial claim, since they applied another \$2,975.00 in rent has become owing that was not included in the original application for the period of February 15, 2021 through to May 15, 2021. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlords' request to amend their original application from \$4,600.00 to \$7,575.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

The tenant confirmed in the hearing that the landlords are no longer harassing the tenant, and that the tenant no longer required the requested orders related to this issue. Accordingly, these portions of the tenants' application were cancelled, and the hearing proceeded to deal with the following issues set out below.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in 2011. The landlords purchased the home from the previous owner in 2015. The rent is currently set at \$850.00 per month, payable in

two installments of \$425.00 on the 15th and 30th day of each month. Both parties could not confirm, or recall, whether a security deposit was collected at the beginning of the tenancy.

Both parties confirmed that the tenant and landlords discussed a repayment plan for the outstanding rent for the affected rent period of March 18, 2020 to August 17, 2020. The tenant testified that although there were discussions, and although she did present the landlord with a written proposal which was uploaded in evidence, the landlord had never provided the tenant with a proper repayment plan in accordance with the legislation. The landlord confirmed in the hearing that the tenant was never provided with a formal, written repayment plan, but that both parties had communicated and discussed the repayment of the outstanding rent.

The landlord testified that the tenant owed \$3,750.00 for the period of March 18, 2020 to August 7, 2020, plus the rent for the months of February 2021 through to May 15, 2021. The landlord is requesting an Order of Possession as well as a Monetary Order for the outstanding rent and recovery of the filing fee.

The tenant does not dispute that she has not paid any rent any rent as of February 2021 as she was confused as to what she had owed the landlords. The tenant testified that she had applied for rental assistance in the amount of \$1,500.00, which the landlords had refused to accept towards the outstanding rent for the affected period.

Analysis

The tenant received 10 day Notices to End Tenancy on February 8, 2021, and filed their application for dispute resolution on February 11, 2021. I find that the tenant filed their application pursuant to section 46(4) of the *Act*, within five days of receiving the 10 Day Notice as required by the *Act*. I must now consider whether the 10 Day Notice is valid.

Section 26 of the *Act* requires that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.”

The landlords indicated on the 10 Day Notice that the 10 Day Notice was served on the tenant for the tenant's failure to pay \$4,600.00 in outstanding rent that was due on February 1, 2021. The landlord testified that this amount includes the \$3,750.00 for the period of March 18, 2020 to August 7, 2020 plus an additional \$850.00 in outstanding rent.

As set out in **Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures**, the \$3,750.00 in outstanding rent referenced by the landlord falls under the “affected rent” period of March 18, 2020 to August 17, 2020. As per the Policy Guideline and associated tenancy regulation, “a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required.”

Residential Tenancy Policy Guideline #52 states the following:

The C19 Tenancy Regulation requires that the repayment plan be in writing and include:

- The date the repayment period starts;
- The total amount of affected rent that is unpaid;
- The date on which each installment must be paid; and
- The amount that must be paid in each installment.

If a repayment plan does not comply with the terms and requirements set out above, it has no effect. If a repayment plan has no effect, it cannot form the basis for a 10 Day Notice to End Tenancy for Unpaid Rent and it cannot cancel a prior agreement. A repayment plan will only take effect when the landlord or tenant, who is giving the repayment plan, gives it to the other person and it complies with the requirements and terms.

A landlord must not give a tenant a 10 Day Notice to End Tenancy for unpaid affected rent unless the landlord has previously given the tenant a valid repayment plan or there is a valid prior agreement.

Although both parties may have discussed the implementation of a repayment plan, I do not find that the landlords had given the tenant a repayment plan in a manner set out in the Policy Guideline as noted above, nor do I find that there was a valid prior agreement. As noted in the Policy Guideline, a 10 Day Notice to End Tenancy that is given to a tenant in relation to affected rent when the tenant has not missed an installment for an effective repayment plan (or a payment under a prior agreement that is in force) is of no effect. An Order of Possession will not be granted to a landlord in these circumstances.

I have also reviewed the document submitted by the landlords to support the payments received and unpaid balances. In review of this document, I note that the tenant did make rent payments of \$425.00 on December 16, 2020, December 30, 2020, January 15, 2021, and February 1, 2021 prior to the issuance of the 10 Day Notice on February 8, 2021. I find that the tenant's concerns about clarity about outstanding rent to be valid. I am not satisfied that the evidence clearly supports that the tenant failed to pay the \$850.00 in outstanding rent referenced on the 10 Day Notice to End Tenancy at the time that the 10 Day Notice was served on the tenant.

Accordingly, I allow the tenant's application to cancel the 10 Day Notice to End Tenancy dated February 8, 2021. The tenancy is to continue until ended in accordance with the *Act*.

For further details about repayment plan requirements please refer to the following links, or contact the Residential Tenancy Branch:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19>

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb14.pdf>

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl52.pdf>

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/temporary/covidreg3-579-2020.pdf>

As the tenant does not dispute that she has not paid the rent for the period of February 15, 2021 through to May 15, 2021, I allow the landlord's application for a monetary order for this period as set out in the table below:

Item	Amount
Unpaid Rent February 15, 2021	\$425.00
Unpaid Rent February 28, 2021	425.00
Unpaid Rent March 15, 2021	425.00
Unpaid rent March 30, 2021	425.00
Unpaid Rent April 15, 2021	425.00
Unpaid Rent April 30, 2021	425.00

Unpaid rent May 15, 2021	425.00
Total Monetary Order	\$2,975.00

I dismiss the remainder of the landlords' monetary application for unpaid rent with leave to reapply.

As the landlord was partially successful with their application, I allow the landlord to recover half of the filing fee.

Conclusion

I allow the tenant's application to cancel the landlords' 10 Day Notice. The 10 Day Notice is of no force effect. The tenancy will continue until ended in accordance with the *Act*.

The tenant withdrew the other portions of their application.

I issue a \$3,025.00 Monetary Order in favour of the landlords as set out in the table below:

Item	Amount
Unpaid Rent February 15, 2021	\$425.00
Unpaid Rent February 28, 2021	425.00
Unpaid Rent March 15, 2021	425.00
Unpaid rent March 30, 2021	425.00
Unpaid Rent April 15, 2021	425.00
Unpaid Rent April 30, 2021	425.00
Unpaid rent May 15, 2021	425.00
Half of Filing Fee	50.00
Total Monetary Order	\$3,025.00

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.

I dismiss the remainder of the landlords' application for recovery of unpaid rent with leave to reapply.

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: May 17, 2021

Residential Tenancy Branch