



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant application 1: CNR, RR, RP, MNDC, MNR, FF
Tenant application 2: CNR, RR, RP, MNDC, MNR, FF

Introduction

This hearing dealt with the tenant's two applications for dispute resolution under the Residential Tenancy Act (Act) for:

In their first application, made on February 18, 2021, the tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- a reduction in monthly rent;
- an order requiring the landlord to make repairs to the rental unit;
- compensation for a monetary loss or other money owed;
- reimbursement of the cost of making emergency repairs; and
- to recover the cost of the filing fee.

In their second application, made on March 10, 2021, the tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- a reduction in monthly rent;
- an order requiring the landlord to make repairs to the rental unit;
- compensation for a monetary loss or other money owed;
- reimbursement of the cost of making emergency repairs; and
- to recover the cost of the filing fee.

While the two, separate applications of the tenant were scheduled at the same time and referred to as a cross application, that is incorrect. Under the Residential Tenancy Branch Rules of Procedure (Rules), a respondent, the landlord here, may file an

application for dispute resolution to respond to an existing, related application, if the issues are related. That would be a cross application. This however, is simply two applications by the same tenant.

Despite this, I elected to proceed on both the tenant's applications in this hearing.

The hearing began as scheduled at 11:00 a.m., Pacific Time, on Tuesday, May 25, 2021, and the telephone system remained open and was monitored for 21 minutes. During this time, the applicant/tenant did not dial into the telephone conference call hearing; however, the landlord and her agent were present and ready to proceed with the hearing.

During the hearing, the landlord confirmed that they wanted an order of possession for the rental unit due to the tenant's failure to pay the monthly rent.

While waiting for the tenant to appear, the landlord gave evidence in support of the landlord's Notice.

On a procedural note, the matter of evidence was discussed. There had been no evidence submitted by either party on either of the tenant's two applications. I therefore did not have a copy of the 10 Day Notice issued by the landlord, which the tenant was disputing.

The landlord disclosed that she had filed a previous application for dispute resolution under the ex-parte, non-participatory Direct Request process, in which the landlord filed for an order of possession of the rental unit pursuant to a 10 Day Notice and a monetary order for unpaid monthly rent. The landlord's application contained some deficiencies and the matter was adjourned and set to be reconvened for a participatory hearing before another arbitrator.

The landlord said she was told by staff at the Residential Tenancy Branch (RTB) that her application for dispute resolution would be merged with the tenant's applications for this hearing, and their evidence would be uploaded for this hearing.

I informed the landlord that was not the case and as I was unaware of her application, asked for their file number. I then reviewed the landlord's application for dispute resolution and was able to view a copy of the landlord's 10 Day Notice at issue here.

I elected to use my authority under section 62(1)(b) of the Act and accepted into evidence a copy of the 10 Day Notice that had been submitted with the landlord's application.

The 10 Day Notice, which was on the RTB approved form with content meeting the statutory requirements under section 52 the Act, was dated February 9, 2021, with an effective move out date of February 28, 2021.

The landlord submitted without dispute that she served the Notice to the tenant by registered mail on February 10, 2021. The tenants' application confirmed service of the Notice on February 17, 2021, by registered mail.

The landlord said that they had made an inadvertent error on the Notice, which listed that the amount of unpaid monthly rent was \$1,995, due on February 10, 2021. The landlord said that they transposed the numbers, and instead the monthly rent was due as of February 01, 2021.

I find the typographical error did not materially affect the Notice, as the tenant filed her application within the required time frame and did not submit evidence to challenge the Notice.

The landlord testified that since the 10 Day Notice was issued to the tenant, the tenant remains in the rental unit, has failed to pay any rent, and owes an outstanding rent deficiency of \$7,980 through the day of the hearing, representing unpaid rent for the months of February, March, April and May 2021 each. The monthly rent due under the written tenancy agreement found in the landlord's application for dispute resolution is \$1,995, due on the first day of the month.

Analysis

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenant, I order the tenant's two applications dismissed, without leave to reapply.**

Order of possession of the rental unit –

Given the above, pursuant to section 55(1) of the Act, I must grant an order of possession of the rental unit to the landlord.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable two (2) days after service on the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

Monetary order for unpaid rent –

Pursuant to section 55(1.1) of the Act, in these circumstances, I must also grant the landlord an order requiring the payment of the unpaid rent. The amount of the unpaid monthly rent currently is \$7,980, which is comprised of \$1,995 for the months of February, March, April and May 2021, each.

The landlord is provided with a monetary order in the amount of \$7,980 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.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

The landlord is informed that if they want this Decision to be considered for any reason in their upcoming hearing on the landlord's application for dispute resolution, the same should be separately submitted in that file.

Conclusion

The tenant's two applications are dismissed **without leave to reapply**. The landlord has met the statutory requirements to end the tenancy and is granted an order of possession of the rental unit, effective two days after service on the tenant.

The landlord has established that the tenant owes a total of \$7,980 in unpaid rent and is granted a monetary order in that amount.

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 25, 2021

Residential Tenancy Branch