



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1455 PARSUM HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 4, 2021 (10 Day Notice) and to recover the cost of the filing fee.

The tenant, landlord agent DS (agent), a support person for the tenant TF (support) and a witness for the landlord, V (witness), attended the teleconference hearing. The tenant and landlord were affirmed and given the opportunity to testify and present any evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The parties were also given the opportunity to ask questions during the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised any concerns regarding the service of documentary evidence or the ability to review that evidence, I find that both parties were served in accordance with the Act.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Is the tenant entitled to the recovery of the filing fee under the Act?

### Background and Evidence

The parties agreed that the tenancy began on November 1, 2017. The parties also agreed that current monthly rent was \$999.00 per month and due on the first day of each month. A copy of the 10 Day Notice was not submitted in evidence. The parties agreed that the 10 Day Notice was dated March 4, 2021, which the tenant testified they received on March 5, 2021, although the tenant wrote in their application that they received the 10 Day Notice on March 4, 2021. In addition, the tenant stated later in the hearing again that the 10 Day Notice was received on March 4, 2021 on their door.

The effective vacancy date listed on the 10 Day Notice was March 17, 2021. The amount listed as owing on the 10 Day Notice was \$999.00 due March 1, 2021 plus a \$25.00 late fee. The tenant filed their application to dispute the 10 Day Notice on March 8, 2021.

The landlord stated that the tenant failed to pay March 2021 rent, but that rent for February, April, May and June 2021 have been paid. The tenant testified that on February 26, 2021, they went to Western Union and purchased a money order dated February 26, 2021 in the amount of \$999.00 (Money Order). The tenant testified that on February 26, 2021, the Money Order was placed in the manager's office mail slot and that on March 4, 2021, the tenant writes in their application that they arrived home to see the 10 Day Notice on their door.

The tenant stated that he went to the landlord and showed them a receipt and went to Western Union to follow up. The tenant testified that Western Union advised the tenant that the Money Order was cashed on March 1, 2021 even though it was made out to the name of the landlord company name so nobody else should have been able to cash it.

A copy of the Money Order was submitted by the tenant and it does not state the name of the landlord company, but instead says JW. The tenant stated that they looked up the name of JW and said that person has warrants for their arrest but that they don't know

JW and as a result, speculated that once the Money Order was placed in the mail slot, JW or someone who gave the Money Order to JW, stole the Money Order from the manager's office by putting their hand through the mail slot and down into the box just below the mail slot. The tenant stated that previously there was a blue box 3 inches below the mail slot door and that anybody could reach in easily into the blue box and that it was later changed to a clear box and was a little lower so although harder to get to, could still be reached into if someone tried. The agent stated that they doubt someone could reach into the clear box and does not recall a blue box as described by the tenant.

It should be noted that the property was purchased by the new owners earlier in 2021 and that a new manager named V started. As a result, V was called as a witness. The witness was affirmed and testified that they began as manager on May 18 and that in the last 2 weeks, the manager removed the clear box as they were concerned that someone could reach through the mail slot door into the clear box. The witness denied that there were any thefts from the manager's box (mailbox) during their time in the building. The tenant claims they were advised by DC, a former manager, that there had been 11 prior thefts from the mailbox. Neither the agent nor the witness was aware of any thefts from the mailbox. The witness confirmed that mail now drops from the mail slot door onto the floor.

The agent asked the witness if they had ever tried to put their hand through the mail slot to reach into the clear box and the witness replied that they had not. The agent confirmed that the building can only be accessed via a fob and that the manager office is out of the way down a hallway and not easily found.

The agent asked the tenant if they could have possibly left the money order blank as it does not show the landlord's name on the Money Order submitted in evidence that was returned from the bank in Burnaby where it was cashed by JW on March 1, 2021. The tenant testified that they did not leave the Money Order blank and that the name of the landlord company was on the Money Order and had no explanation for how the name of JW could be shown on the Money Order without the landlord's name showing as being crossed out or modified. There is also no amount or date showing on the Money Order submitted in evidence; however, the receipt document supports that the tenant paid for and obtained a Money Order which matches the Money Order number with the name of JW on it and was made out in the amount of \$999.00 on February 26, 2021.

The landlord is seeking \$999.00 of unpaid March 2021 rent plus an order of possession. The tenant's position is that rent was paid and that the Money Order being stolen is not

their responsibility and that the Money Order was placed in the mailbox as directed by the agent. The agent did not deny advising the tenant to place the Money Order in the mailbox. In fact, the agent confirmed that the tenant does routinely pay rent via money order.

### Analysis

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

**10 Day Notice issued by landlord – Section 26(1) of the Act applies and states:**

#### **Rules about payment and non-payment of rent**

26(1) 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.

Based on the above and considering all of the evidence before me I make the following findings. Firstly, as the tenant submitted a Western Union Money Order, I have perused the Western Union website which confirms the following about changing the payee name after the money order has been completed as follows:

### **≡ CAN I CHANGE THE PAYEE NAME AFTER THE MONEY ORDER HAS BEEN COMPLETED?**

Explore other [articles](#) on this topic.

**Can I change the payee name after the money order has been completed?**

🕒 Mar 6, 2017 · Knowledge

#### **ANSWER**

No, you cannot make changes to a completed money order. Any form of alteration or correction will result in ineligibility for cashing. Alternatively, you may opt for a refund through our office, which you may obtain by following the [How do I request a Money Order refund](#) instructions.

[Western Union website, June 16, 2021]

Based on the above, you cannot make changes to a completed money order. Any form of alteration or correction will result in **ineligibility for cashing**. Based on the above, I am not satisfied that the tenant completed the payee name as they testified to during the hearing as I find the documentary evidence does not support that the landlord name was ever on the Money Order as it reads JW. As a result, I find it is more likely than not that the tenant dropped off a blank Money Order with no payee name listed on the Money

Order. I have reached this finding as I find the tenant's recall of the date the 10 Day Notice was served conflicted several times with both the application details and during the hearing between March 4, 2021 and March 5, 2021.

Regarding the mailbox, I am not satisfied that the landlord provided a secure location to place payments of rent. In other words, I find the landlord equally liable for leaving the mailbox unsecure by having the clear box within reach of the mail slot door which was supported by the witness during the hearing and was only corrected since this incident took place by removing the clear box near the mail slot door.

Therefore, I **cancel** the 10 Day Notice as I find the tenant attempted to pay rent; however, by placing a blank Money Order in the mailbox, I find the tenant is 50% liable and must pay \$499.50 of the unpaid March 2021 rent owing. I also find the landlord is 50% liable for the other \$499.50 by leaving the clear box so close to the mail slot door, which I find to be negligent, especially considering there was no evidence of any type of video surveillance of the mailbox where payments are made. As a result, the tenancy shall continue until ended in accordance with the Act, and I grant the landlord a monetary order of **\$499.50, which I ORDER that the landlord does not enforce until August 15, 2021 to allow the tenant time to arrange for the payment to be made.** This order is made pursuant to section 62(3) of the Act.

As the tenant was 50% liable, I decline to grant the filing fee as the tenant was not fully successful with their claim.

### Conclusion

The 10 Day Notice dated March 4, 2021 issued by the landlord has been cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the Act.

The landlord is granted a monetary order in the amount of \$499.50 which must not be enforced until August 15, 2021. Before enforcing the monetary order it must be served on the tenant by the landlord. Should enforcement be necessary, the landlord may file the order after August 15, 2021 in the Provincial Court (Small Claims Division). The tenant is reminded that they can be liable for all costs related to enforcement of the monetary order.

This decision will be emailed to both parties as indicated above.

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: June 17, 2021

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Residential Tenancy Branch