



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, LRE, LAT, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order authorizing a lock change pursuant to section 31;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with the translator JM (“the landlord”). The translator translated for the tenant throughout the hearing.

The tenant was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

At the start of the hearing, I informed the tenant that recording of the hearing is

prohibited under the Rules of Procedure. The tenant stated that they are not recording the hearing.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 29 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

Service

As the landlord did not attend the hearing, I asked the tenant to confirm that the landlord was served with the Notice of Hearing and Application for Dispute Resolution including his evidence package. The tenant testified that his evidence package included a USB which contained time/date stamped videos and was included in the evidence package.

The tenant testified they sent the material by registered mail to the landlord on April 1, 2020 mailed to the landlord's residence, thereby effecting service under section 90 five days later, that is, on April 6, 2020. The landlord provided the tracking number for the mailing and submitted a copy of the "Progress Report" from mail carrier indicating that the registered mail was picked up on April 7, 2021. The tenant testified that he called the landlord and was informed by her that she had received the evidence and had access to the USB.

Further to the tenant's testimony and supporting documentary evidence, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on April 6, 2020 in compliance with sections 89, 90, and *Rule 3 – Serving the application and submitting and exchanging evidence*, and *Policy Guideline 42 - Digital Evidence*.

Landlord's 10 Day Notice

I explained to the tenant 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's 10 Day Notice, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the 10 Day Notice is granted.

I order that the 10 Day Notice is cancelled and is of no effect.

I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the submissions are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant submitted a copy of the tenancy agreement signed by both parties as evidence of the tenancy. The agreement is in the standard RTB form. The rental unit is a residence.

The tenant testified that the landlord owns the property on which the rented unit is located. In support of his testimony, the tenant submitted a copy of a Title Search dated

April 9, 2021 which indicated the landlord is the owner.

The tenant testified as to the tenancy particulars as reflected in the tenancy agreement, his evidence summarized as follows:

INFORMATION	DETAILS
Type of tenancy	Fixed term (expiry October 1, 2060)
Date of beginning	October 1, 2019
Date of ending	Ongoing
Monthly rent payable on 1 st	\$1.00 (as stated in agreement; see below)
Security deposit	\$1.00 (as stated in agreement; see below)
Pet deposit	None
Outstanding rent at time of hearing	none

The tenant stated that he paid \$600.00 to the landlord to cover the \$1.00 monthly rent for a period of 600 months. A copy of a money order in this amount (\$600.00) dated March 29, 2021 was submitted as supporting documentary evidence.

In addition to the nominal rent in the agreement, the tenant testified to a verbal agreement between the parties that the tenant will pay all expenses relating to the unit including mortgage payments. The tenant testified he has transferred monthly payments to the landlord regularly during the tenancy and has paid all expenses associated with the property, including utilities.

In support of this assertion, the tenant submitted copies of some financial records such as bank receipts. For example, one such bank receipt shows a bank transfer of \$5,000.00. The tenant testified this was a transfer of \$5,000.00 from the tenant to the landlord on April 27, 2021 for rent. The tenant testified that is a routine monthly payment.

The tenant testified he directly pays for all utilities related to the unit. He submitted copies of invoices from two utility companies which show that utilities are in his name

and that he pays the accounts.

The tenant testified that the landlord issued a 10 Day Notice for non-payment of rent in the RTB form, a copy of which was submitted, the details of which are summarized in the following table:

ITEM	DETAILS
Date of Notice	March 27, 2021
Method of Service	Posting to unit March 27, 2021
Effective date of Service (per section 90 RTA)	March 30, 2021
Application filed by tenant	March 30, 2021

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The 10 Day Notice included the following provision:

You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

The tenant applied to dispute the Notice within the time period, and I have earlier dismissed the Notice.

The tenant claimed he did not owe rent and the landlord issued the Notice as part of a campaign against the tenant to gain control of the unit and force the tenant to move out.

The tenant requested the following orders:

1. order to restrict or suspend the landlord's right of entry
2. order requiring the landlord to comply with the Act, and
3. order authorizing a lock change

The tenant testified as follows. Since the tenancy began, the landlord has not complied with the Act by entering the unit without permission multiple times. In doing so, she has damaged or destroyed the tenant's security system, and taken items belonging to the tenant. The entries occur when the tenant is away at work. All incidents were immediately reported to the police.

The tenant testified that the landlord has two companions who assist her with the unauthorized entries, their names appearing on the first page.

In his written application, the landlord wrote as follows about the landlord and her companions (as written):

they threaten me. break in my house, damage my locker, damage my camera system and alarm sytem in sside house,climb from my fence into my back yard and break in damage and steal my personal things, over 5 times in 6 monthes, police have file ...

In support of his testimony, the tenant submitted a time and date stamped video of the landlord and one of the alleged companions climbing over the unit's perimeter fence. The video dated March 12, 2021 shows a woman and a man climbing over a fence in daylight.

The tenant testified the landlord destroyed the exterior security camera and the interior electrical box coordinating the security system. In support of his testimony, the tenant submitted a video dated March 12, 2021 showing the landlord hitting the exterior security camera with a shovel and a photo of the broken electrical box. A still image shows one of the male companions inside the door of the unit.

The tenant testified that the landlord gained access to the house by breaking in and destroying the lock. In support of his testimony, the landlord submitted a photograph of a destroyed lock which the tenant testified he believed was destroyed by the landlord and one of her companions.

The landlord requested an order requiring the landlord to comply with the Act, that is, to provide quiet enjoyment and to provide notice of entry as required. The landlord requested authorization to replace the lock without providing a copy of the key to the landlord.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each claim are set out below.

The landlord provided believable, well-supported testimony. I find the landlord gave credible testimony which was supported by documentary evidence.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. (Rule 6.6 of the Rules of Procedure)

Considering the landlord's testimony and supporting documents, I find the landlord has met the standard of proof with respect to all aspects of his claim.

I find the tenant and landlord have a tenancy agreement which started October 1, 2019 for the unit. I find the tenancy is ongoing. I have ordered that the tenancy continue until it is ended in accordance with the Act and the agreement.

I find the landlord has unlawfully and without notice entered the unit on multiple occasions without the tenant's permission, damaging the tenant's property including his security system.

I find the landlord has gained entry by breaking the lock thereby damaging or destroying the lock on the door of the unit.

Each claim is addressed separately.

1. Order to restrict or suspend the landlord's right of entry

I accept the tenant's testimony as supported by evidence that the landlord has entered the unit multiple times during the tenancy without complying with the Act and has damaged the tenant's security system and the lock of the unit.

The Act restricts the landlord's right to enter. Section 29 states as follows:

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I order that the landlord comply with the section 29 of the Act which includes a requirement that the landlord provide proper notice to the tenant.

I direct that the tenant may bring a further application as necessary with respect to compliance with the landlord's obligations in this regard.

2. Order requiring the landlord to comply with the Act,

Section 28 of the Act requires that the landlord ensure that the tenant's right to quiet enjoyment and peaceful occupation of the premises is respected.

As discussed above, Section 29 provides restrictions on the landlord's right to enter the

unit. Subject to certain exceptions, the landlord must not enter a rental unit for any purpose. This rule is modified in certain situations such as when the tenant gives permission, the landlord provides 24-hour written notice, and there is an emergency.

I find the landlord has failed to comply with section 28 and 29.

I order that the landlord comply with sections 28 and 29 of the Act.

I direct that the tenant may bring a further application as necessary with respect to compliance with the landlord's obligations in this regard.

3. Order authorizing a lock change

As stated, I accept the tenant's testimony as supported by evidence that the landlord has entered the unit multiple times without complying with the Act and has damaged the tenant's security system and the lock of the unit.

Section 31(3) of the Act provides as follows:

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Pursuant to this section, I find the tenant has met the burden of proof that the tenant should only have access to the unit subject to the landlord's rights to enter as previously discussed.

Accordingly, I order that the tenant may change the locks in the unit and keep the only keys or means of access.

I direct that the tenant may bring a further application as necessary with respect to compliance with the landlord's obligations in this regard.

Damages

I order that the tenant may apply for a monetary order under the Act with respect to these claims.

Filing fee

As the tenant has been successful in this matter, I award the tenant reimbursement of the filing fee of \$100.00 which the tenant may deduct from rent on a one-time basis.

Summary

I order as follows:

1. I order that the 10 Day Notice is cancelled and is of no effect and the tenancy shall continue until ended in accordance with the agreement and the *Act*.
2. I order that the landlord comply with the section 29 of the Act which includes a requirement that the landlord provide proper notice to the tenant.
3. I order that the landlord comply with sections 28 and 29 of the Act.
4. I order that the tenant may change the locks in the unit and keep the only keys or means of access.
5. I direct that the tenant may bring a further application as necessary with respect to compliance with the landlord's obligations in this regard.
6. I order that the tenant may apply for a monetary order under the Act with respect to these claims.
7. I award the tenant reimbursement of the filing fee of \$100.00 which the tenant may deduct from rent on a one-time basis.

Conclusion

I order as follows:

1. I order that the 10 Day Notice is cancelled and is of no effect and the tenancy shall continue until ended in accordance with the agreement and the *Act*.
2. I order that the landlord comply with the section 29 of the Act which includes a requirement that the landlord provide proper notice to the tenant.
3. I order that the landlord comply with sections 28 and 29 of the Act.
4. I order that the tenant may change the locks in the unit and keep the only keys or means of access.
5. I direct that the tenant may bring a further application as necessary with respect to compliance with the landlord's obligations in this regard.
6. I order that the tenant may apply for a monetary order under the Act with respect to these claims.
7. I award the tenant reimbursement of the filing fee of \$100.00 which the tenant may deduct from rent on a one-time basis.

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: July 20, 2021

Residential Tenancy Branch