



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Affordable Housing Charitable  
Association and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, DRI  
For the landlord: OPR-DR, MNR-DR, FFL

### **Introduction**

On April 12, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord (the "10-Day Notice"). The tenant also disputed a rent increase that they submit was above an amount allowed by law.

On April 23, 2021 the landlord applied for an order of possession of the rental unit, and recompense of unpaid rent amounts. Additionally, they applied for reimbursement of their Application filing fee. The landlord filed this as a Direct Request; however, this application cannot be considered by that method when there is a prior extant request from the tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on August 16, 2021. Both parties attended the teleconference hearing. At the outset, each party confirmed they received prepared documentary evidence from the other; on this basis the hearing proceeded at the scheduled time.

### **Issue(s) to be Decided**

Is the tenant entitled to an order that the landlord cancel or withdraw the 10-Day Notice?

If the tenant is unsuccessful, is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(1.1) of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The landlord provided a copy of the current tenancy agreement between the parties in this subsidized housing arrangement. This establishes that the tenancy started on February 1, 2016. The rent amount in the agreement is \$1,700. The landlord explained that this is a situation in which “rent is geared to income”, that being 30% of the tenant’s income. If the tenant is unable to provide adequate records as requested to show income information to the landlord when requested, this can revert to the amount of rent as indicated on the tenancy agreement.

An addendum to the agreement sets out the income reporting requirements for this situation where the rent is related to the tenant’s income. This part of the agreement also specifies: “. . . such failure [to disclose] will be deemed to be a material breach of this tenancy agreement entitling the landlord to end this tenancy agreement and to recover from the tenant in contract or otherwise the difference between the amount the tenant paid and the amount the tenant is required to pay under this tenancy agreement.”

Based on the tenant’s income, the rent amount they actually paid to the landlord was \$480. This amount was in place since approximately the start of January 2020 onwards.

The landlord provided records that are their request letters to the tenant for more information on their income. The initial two letters set a due date by which the tenant should provide the information. In their third letter to the tenant dated March 3, 2021, the landlord advised that the tenant did not comply with the request for more information. Because of this, the landlord removed the subsidy that was in place with the tenant. They stated: “. . . your subsidy has been withdrawn and you are required to pay the full market rent of \$1,700 . . .”

After this, the tenant did not pay the full amount of rent for April 2021. This was the basis for the landlord issuing the 10-Day Notice on April 7, 2021. This document

advised the tenant must move out from the rental unit by April 17, 2021. The landlord provided that the rent amount that the tenant failed to pay was \$2,950.

The landlord provided a ledger record of the tenant's payments for rent. This shows:

- removal of the subsidy on March 8 – this added \$1,220 to that month's rent, offsetting the \$480 amount
- with insufficient funds for March 2021 rent, this added a \$25 fee for an NSF cheque
- a carryover amount from a prior NSF charge added \$5 to this amount
- the full amount of April 2021 rent at \$1,700 was not paid by the tenant

By April 7, 2021 this left the total amount of rent owing by the tenant to be \$2,950. In their evidence, the tenant included a printed notification of this amount from the landlord.

In the hearing, the tenant presented that they had entered into a payment plan with a representative of the landlord who was not in the hearing. This was for an amount of \$82.63 monthly for 36 months to repay the outstanding amount that was indicated on the 10-Day Notice. They re-stated their commitment to repay the outstanding amount; however, they wished for clarity on the correct calculation of their subsidy.

The landlord also spoke to more recent rent issues with the tenant. The landlord had more recently requested information from the tenant in June, and again confirmed removal of the subsidy in July 2021.

The landlord also proposed a solution to the problem whereby the tenant would pay only the amount most recently calculated to be a subsidized amount of \$474. This would be for the subsequent months of September and October; however, the tenant would agree to vacate at the end of October 2021. This is despite the landlord's finding that the tenant does not qualify for the subsidy, and also with no regard for any other money owing by the tenant for past rent amounts. In the hearing, the tenant did not agree to the landlord's proposal, citing hardship with their living circumstances and difficulty with having to move.

### Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find there was a valid tenancy agreement in place between the parties. The addendum that forms part of that agreement is specific to the situation at hand where the rent is related to the tenant's income. The reporting requirements are clear, and I find the landlord followed what was set out in the addendum when the tenant did not meet reporting requirements. That resulted in the subsidy being removed on March 8, 2021, the rent thereby adjusted to that \$1,700 amount indicated on the tenancy agreement.

The ledger information provided by the landlord shows the tenant did not make the required rent payment on April 1, 2021. Nor did they pay the amount within the 5-day timeframe as indicated on the 10-Day Notice. I find the evidence shows the tenant was informed of the rent amount owing; moreover, it shows that the correct amount of rent for April 2021 was not paid. This included carryover from March 2021.

The tenant did not offset this evidence of the landlord by showing that there was no requirement for them to provide correct and full income information to the landlord in order to qualify for a rent subsidy. Furthermore, the tenant did not provide evidence or testimony to show that the rent was not calculated correctly. Therefore, the tenant had no legal reason to withhold rent.

For these reasons, I find the 10-Day Notice issued by the landlord on April 7, 2021 is valid. The tenant's Application to cancel the 10-Day Notice is dismissed and the tenancy is ending.

Under s. 55 of the *Act*, when the tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find the 10-Day Notice complies with the requirements of form and content; therefore, the landlord is entitled to an order of possession.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. As per the 10-Day Notice, and minus any other evidence showing payment thereof, I grant the outstanding rent amount of \$2,950 with a Monetary Order. The landlord must file an Application for an order for any other rent amounts outstanding.

Because the landlord was successful in their Application, by s. 72 of the *Act*, I award the \$100 Application filing fee to them.

The tenant also applied to dispute a rent increase that they submit was above an amount allowed by law. I find this is related to the tenant's plea – as stated in the hearing – that they want the subsidy to be calculated correctly. On this ground, they did not provide evidence to show there was an incorrect calculation or a subsidy that led to increased rent. In contrast to this, I find the landlord's evidence in the Addendum shows the rationale for the rent reverting to the full amount set out in the agreement. I therefore dismiss this piece of the tenant's Application, without leave to reapply.

### Conclusion

For the reasons outlined above, I dismiss the tenant's Application for a cancellation of the 10-Day Notice.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants. Should the tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 55(1.1) of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the unpaid rent referred to in the 10-Day Notice. This amount is \$2,950. By s. 72 of the *Act* I grant the landlord \$100 for the Application filing fee. The landlord is provided with this Order in the above terms and they must serve the tenant with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court where it may be enforced as an order of that Court.

This decision is made by the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 18, 2021