



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sanford Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNC-MT, OLC, RP, AAT, CNR, OPT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession of the rental unit pursuant to section 54;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The landlord was represented by their legal counsel, AS ("landlord"), 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.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and amendment. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with copies of the tenant's Application and

amendment. The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the Act, I find the tenant duly served with the landlord's evidence.

As the tenant confirmed receipt of the 1 Month Notice dated March 29, 2021, and the 10 Day Notice dated July 16, 2021, I find that the tenant duly served with both Notices in accordance with section 88 of the Act.

At the outset of the hearing, the tenant confirmed that he was still occupying the rental unit, and had applied for an Order of Possession pursuant to section 54 of the Act in error. Accordingly, this portion of the tenant's application was cancelled.

**Preliminary Issue—Tenant's Application for an Extension of Time to File her Application for Dispute Resolution**

The tenant was served with the 1 Month Notice to End Tenancy, which was posted on the tenant's door on March 29, 2021. The 1 Month Notice is deemed served 3 days after posting, on April 1, 2021. The tenant filed an application disputing the 1 Month Notice on April 8, 2021, but the application was not completed until April 19, 2021. The tenant submits that they were informed by the RTB by email that they had until April 19, 2021 to complete the application process as changes were required.

The tenant has the right to dispute the 1 Month Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the Act.

Section 66 (1) of the Act reads:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).*

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. I have reviewed the file and emails sent by the RTB, and I find that the RTB did not respond to the tenant until April 16, 2021 even though the tenant had initially filed their application on April 8, 2021, which is within the required time limit. I find that due to exceptional circumstances, in this case the delayed response time by the RTB, the tenant's completed application was not processed until April 19, 2021.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has met the burden of proof to justify that there is an exceptional reason for the late filing of their application. Under these circumstances, I am allowing their application for more time to make their application.

**Issues to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the landlord's 1 Month Notice be cancelled?  
If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

**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 on November 1, 2017. The tenant pays a portion of the subsidized rent, which in this case is \$375.00, payable on the first of the month.

The landlord served the tenant with a 1 Month Notice on March 29, 2021 providing the following grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;

The landlord submits that the tenant has engaged in unacceptable behaviour towards other staff and tenants in the building. The landlord provided documentation to show that this has been occurring since February 23, 2018, and despite repeated warnings to the tenant, the tenant continues to engage in similar behaviour, which includes racial slurs and verbal abuse towards staff and tenants. The landlord called a witness in the hearing, KS, who testified that they were shaken after the tenant had shouted racist remarks towards KS during a confrontation. The tenant questioned KS's honesty in the hearing, and states that KS was the party who was rude, and made inappropriate remarks. The tenant testified that they were subject to discrimination for the way they dress and because the other parties exhibited transphobia.

The landlord submits that they have been tolerant with the tenant's ongoing issues, and had waited until they had no choice but to issue a 1 Month Notice. The tenant disputes the validity of the 1 Month Notice, and filed an application to cancel the Notice.

The landlord also served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by posting the 10 Day Notice on the tenant's door on July 16, 2021. The landlord served the 10 Day Notice after the tenant failed to pay rent for the months of June and July 2021. The landlord testified that the tenant has not paid that rent, nor has the tenant paid for the month of August 2021. The landlord testified that the tenant now owes \$1,125.00 in outstanding rent. The tenant confirmed in the hearing that they had not paid rent since May 2021 as they withheld the rent due to the outstanding repairs that have not been completed in the rental unit, which included a plugged sink and bathtub. The tenant requested cancellation of the 10 Day Notice.

The tenant filed an application for an order that the landlord perform the required repairs, for the landlord to comply with the *Act*, and to allow access for the tenant and their guests to the rental unit.

Both parties also confirmed that a fire took place in the rental unit on May 29, 2021. The landlord testified that they are still waiting for the tenant to vacate the rental unit in order to complete the required repairs. The tenant testified that they have been unable to vacate the rental unit as they have no alternative housing. Both parties confirmed that the tenant is still currently residing in the rental unit. The landlord requested an Order of Possession for August 31, 2021.

## **Analysis**

Section 26 of the Act, in part, states as follows:

### **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.

I have considered the testimony of both parties in the hearing, as well as the evidence submitted for this application. I find it undisputed that the tenant has not paid rent for the months of June, July, or August 2021. I have considered the fact that there was a fire that took place on May 29, 2021, and whether this could be considered a frustrated tenancy.

**Residential Tenancy Policy Guideline 34** states the following about a Frustrated Tenancy:

*A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*

*The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.*

*A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.*

*The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15<sup>th</sup> day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the*

*contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.*

In consideration of the evidence and testimony before me, I am not satisfied that this tenancy meets the definition of a Frustrated Tenancy as clarified by RTB Policy Guideline 34. Despite the fact that there are outstanding repairs in the rental unit, the tenant has continued to reside in the rental unit. Although I am sympathetic to the fact that the tenant has not been able to find alternative housing, I find that the tenant is still able to occupy the rental unit. Accordingly, I find that the rental unit is still inhabitable, and the tenancy does qualify as a Frustrated Tenancy.

I have also considered the tenant's testimony that they had withheld the monthly rent for repairs that have not been addressed by the landlord. Despite the issues raised by the tenant about the condition of the rental unit, the tenant has not filed any previous applications allowing the tenant to reduce their rent for services or facilities not provided, nor has the tenant filed any previous applications. Accordingly, I find that the tenant did not have the right or permission to deduct or withhold rent, and accordingly I find that the tenant has failed to pay the outstanding rent as required by section 26 of the *Act*. On this basis, I find that the landlord had sufficient grounds to end the tenancy pursuant to the 10 Day Notice dated July 16, 2021, and I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

Section 55(1) and (1.1) of the *Act* reads as follows:

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, July 21, 2021. As the tenant has not moved out, I find that the landlord is entitled to an Order of Possession for August 31, 2021 as requested. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by August 31, 2021, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on my decision to dismiss the tenant's application to cancel the 10 Day Notice, and pursuant to section 55(1.1) of the *Act*, I find that the landlord is entitled to a monetary order in the amount of \$1,125.00 for the outstanding rent for this tenancy.

As the tenancy has ended on the basis of the 10 Day Notice, I decline to make any findings on the merit of the 1 Month Notice to End Tenancy for Cause.

The tenant filed an application for repairs. I find that the rental unit does require repairs, which may necessitate access to be provided by tenant in order for the landlord to complete these repairs. I order that the landlord undertake and complete repairs as required by section 32 of the *Act*. I order that the tenant provide the necessary access for these repairs to be completed. In the case that the tenant is unable to do so, I order that the landlord perform these repairs as soon as the landlord is able to do so.

In regard to the tenant's other applications, I am not satisfied that any other orders are required as the landlord has not denied access to the rental unit for the tenant or tenant's guests in a manner that contravenes the *Act*. Accordingly, I dismiss the remainder of the tenant's application without leave to reapply.

### **Conclusion**

The tenant withdrew their application under section 54 of the *Act* for an Order of Possession.

I order that the landlord undertake and complete repairs as required by section 32 of the *Act*. I order that the tenant provide the necessary access for these repairs to be completed. In the case that the tenant is unable to do so, I order that the landlord perform these repairs as soon as the landlord is able to do so.

I dismiss the remainder of the tenant's applications without leave to reapply.

I find the 10 Day Notice to End Tenancy dated July 16, 2021 to be valid. I grant an Order of Possession to the landlord effective August 31, 2021, which must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$1,125.00 Monetary Order in favour of the landlord for unpaid rent for the months of June 2021 through to August 2021. 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.

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: August 11, 2021

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Residential Tenancy Branch