



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, OLC, LRE, PSF, OT, DRI, MNDCT**

### Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- other unspecified relief;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

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

Is the tenant entitled to any of the other relief sought?

### Background and Evidence

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

The parties agree on the background facts. This periodic tenancy began on July 15, 2019. The rental unit is a suite in a multi-unit rental building operated by a non-profit organization under a contract with BC Housing. The rent for the unit is \$1,022.00. The landlord holds a security deposit of \$187.50 for this tenancy. The rental unit is a subsidized unit with the tenant's rent contribution calculated based on their income. From December 2019 to June 2020 the tenant's monthly rent contribution was calculated as \$300.00.

In June 2020, the tenant indicated that they were receiving CERB, due to the COVID pandemic. The tenant's income was recalculated at that time and based on their declared income, which included CERB as taxable income, the tenant was responsible to pay \$600.00 monthly. The tenant underpaid from June through October 2020 and there was a rental arrear of \$968.15 as at April 25, 2021 when the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant has made some payments towards the arrears and the landlord testified that the outstanding amount as at August 31, 2021, the date of the hearing is \$768.15.

The tenant submits that the recalculation of their income and rental portion constitutes a rent increase during a period when there was a moratorium on rent increases. They seek a determination that the recalculation is invalid, a monetary award for a return of overpaid rent and cancellation of the 10 Day Notice. In their application the tenant also seeks a variety of other relief for which they made no oral submissions or provided documentary evidence.

### Analysis

Pursuant to the *Emergency Program Act* and *COVID-19 Related Measures Act* annual rent increase notices with an effective date after March 30, 2020 and before January 1, 2022 are of no force or effect.

However, this provision does not apply to non-profit housing tenancies where rent is geared to income. The calculation of a tenant's rental subsidy is not a rent increase as contemplated under the Act but a manner by which a tenant's eligibility for shelter funding is periodically calculated.

In the present case the recalculation of the tenant's housing subsidy in June 2020 is not an increase in the amount of rent payable for the rental unit but a method to determine how much shelter subsidy the tenant is eligible to receive.

While the tenant submits that the base rent for the rental unit is exceedingly high and they make complaints about the condition of the suite, rental building and services available, I find these factors would not give rise to a basis to withhold the monthly rent under the tenancy agreement.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant filed their application for dispute resolution on April 28, 2021 in response to the notice of April 25, 2021. I therefore find that the tenant was within the timeline provided under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The parties agree that the tenant has not paid the full amount demanded by the landlord and that there is presently an arrear of \$768.15, as at the date of the hearing.

As noted above, I find that the tenant is obligated to pay their rent portion pursuant to the calculated formula used by the landlord. I accept that the tenant's income was deemed to have increased as the formula provides that CERB payment is treated as income. I accept that based on the calculation the tenant was obligated to pay their rent portion of \$600.00 each month from June 2020 to October 2020. I further accept that the parties entered a valid Repayment Plan for the rental arrear.

Based on the foregoing I am satisfied that there was a rental arrear of \$968.15 on April 25, 2021 for which a 10 Day Notice was issued. I accept the evidence that the tenant has made some payments against the arrear but these amounts were accepted for use and occupancy only by the landlord and did not reinstate the tenancy.

Accordingly, I find that the landlord has met their evidentiary burden on a balance of probabilities to show a basis for the issuance of the notice. I therefore dismiss the tenant's application seeking cancellation of the notice.

I have dismissed the tenant's application and find that the 10 Day Notice conforms to the form and content requirements of section 52 of the Act as it is in the prescribed format, is signed and dated by the landlord, identifies the parties the rental unit and gives the reason for the tenancy to end. As such, I issue an Order of Possession in the landlord's favour. As the effective date of the 10 Day Notice has passed, I issue an Order effective 2 days after service.

I am satisfied that there is a rental arrear in the amount of \$768.15 as at the date of the hearing. Pursuant to section 55(1.1) of the Act I grant a monetary award in the landlord's favour for this amount. In accordance with sections 38 and the offsetting provisions of 72 of the Act, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

I find insufficient evidence in support of the balance of the tenant's claim. I find that the tenant's application consists of subjective complaints about the condition of the rental unit, the property, neighborhood and lack of amenities. The tenant provided little testimony regarding these items and I find their written submissions to be insufficient to meet their evidentiary burden. Similarly, I find that the amenities now sought by the tenant are not items listed under the tenancy agreement as services or facilities the landlord is required to provide. I dismiss these portions of the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises 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 monetary order in the landlord's favour in the amount of \$580.65, allowing for recovery of the rental arrear and to retain the security deposit for this tenancy. 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 31, 2021

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Residential Tenancy Branch