



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding West Bay Terrace Corp. and [tenant name  
suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, OLC, MNDCT, RP, AS, MNRT  
OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Tenant (The Tenant's Application) under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An extension to the legislated time period for filing the Application seeking cancellation of the 10 Day Notice;
- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement;
- Compensation for monetary loss or other money owed;
- Repairs to the unit, site, or property;
- Authorization to assign or sublet the rental unit, which has been unreasonably withheld by the Landlord; and
- Recovery of costs incurred to complete emergency repairs pursuant to section 33 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

This hearing also dealt with a Cross-Application for Dispute Resolution that was filed by the Landlord (The Landlord's Application) under the *Act*, seeking:

- An Order of Possession based on a 10 Day Notice;
- Outstanding rent; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call at 9:30 AM (Pacific Time) on November 23, 2021, and was attended by the Tenant T.W., and the agent for the Landlord C.A. (the Agent). All testimony provided by the parties was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be mailed to them at the rental unit address. At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the hearing and recorded on the cover page of this decision.

### Preliminary Matters

#### Preliminary Matter #1

At the outset of the hearing the Agent identified that the Landlord named in both Applications (A.T.) is no longer the owner of the property, as the property has been sold. The Agent provided me with the new owner/landlord's name, and pointed me to Land Title Registration documents in the documentary evidence before me which established to my satisfaction on a balance of probabilities, that the current owner is the corporation named by the Agent at the hearing.

As the Tenant did not dispute that the named corporation, which I shall refer to as the Landlord throughout this decision, was the new owner and Landlord of the property, the Applications were therefore amended to name the current Landlord.

### Preliminary Matter #2

The Agent stated that the Notice of Dispute Resolution Proceeding Package from the Landlord, which included a copy of the Landlord's Application and the Notice of Hearing, was sent to the Tenant at the rental unit by registered mail on August 14, 2021, and delivered on August 17, 2021. The Agent provided me with the registered mail tracking number and the tracking information on the Canada Post website matches the Agent's testimony with regards to service. Although the Tenant initially denied receipt, upon further clarification of what was served, when, and how, they acknowledged service of the Landlord's Notice of Dispute Resolution Proceeding Package by registered mail on August 17, 2021, and expressed that they were simply initially confused about the documents being referred to when they denied receipt.

However, the Agent denied that the current Landlord, or the previous owner A.T. had been served with the Tenant's Notice of Dispute Resolution Proceeding Package or any documents in relation to the Tenant's Application. When asked, the Tenant stated that Service BC had served it for them by mail. When I asked for clarification regarding this process from the Tenant, as Service BC is not responsible for serving documents on parties in relation to dispute resolution proceedings with the Residential Tenancy Branch (the Branch), it became apparent that the Tenant was confused, and that what Service BC had sent were documents related to the Tenant's request for a fee waiver, and that these documents had been sent to the Branch by house mail, not to either A.T. or the current owner.

I spent several minutes speaking with the Tenant regarding service, in order to ascertain whether or not they had served either A.T. or the Landlord with the Notice of Dispute Resolution Proceeding for their Application but ultimately the Tenant stated that they had not, due to confusion regarding the process and requirements.

Section 59 of the *Act* states the following with regards to the service of the Application on the Respondent:

### **Starting proceedings**

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the

application to the other party within 3 days of making it, or within a different period specified by the director.

The Rules of Procedure also state the following with regards to the service of documents and evidence:

### **3.1 Documents that must be served with the hearing package**

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Based on the Tenant's affirmed testimony, I find that neither A.T. nor the current Landlord/owner were served with the Application, the Notice of Hearing, or the evidence before me in accordance with the above noted sections of the *Act* and the Rules of Procedure. Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As neither A.T. or the Landlord were served with the Tenant's Application, Notice of Hearing, or the evidence before me from the Tenant, I find that they did not have a fair opportunity to know the case against them or appear in their defense. As a result, the Tenant's Application is dismissed in its entirety with leave to reapply. This is not an extension of any statutory time limit.

As a result, the hearing proceeded based solely on the Landlord's Application and section 55(1) of the *Act*.

### Settlement

The opportunity for settlement was discussed with the parties during the hearing. The parties were advised on several occasions during the hearing that there is no obligation to resolve the dispute through settlement, but that pursuant to section 63 of the *Act*, I could assist the parties to reach an agreement, which would be documented in my Decision and supporting order.

During the hearing, the parties mutually agreed to settle this matter as follows:

1. The parties agree the tenancy will end on December 17, 2021.
2. The Tenant agrees to vacate the rental property by 1:00 p.m. on December 17, 2021.
3. The rights and obligations of the parties under the *Act* continue until the tenancy ends in accordance with this agreement or the *Act*.
4. The parties agree that the Tenant owes \$2,600.00 in outstanding rent and late fees up to and including the month of November 2021.
5. The Landlord withdraws their Application in full as part of this mutually agreed settlement.

This settlement agreement was reached in accordance with section 63 of the *Act*.

### Conclusion

The Tenant's Application is dismissed in its entirety, with leave to reapply. This is not an extension of any statutory time limit.

I order the parties to comply with the terms of the mutually settled agreement described above.

In support of the settlement described above, and with the agreement of the parties, I grant the Landlord an Order of Possession, effective 1:00 PM on December 17, 2021. The Landlord is provided with this Order in the above terms and 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 Supreme Court of British Columbia and enforced as an order of that Court.

In support of the settlement described above, and with the agreement of the parties, I also grant the Landlord a Monetary Order in the amount of **\$2,600.00**. The Landlord is provided with this Order in the above terms and 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 Branch under Section 9.1(1) of the *Act*.

Dated: November 23, 2021

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Residential Tenancy Branch