



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenant appeared at the hearing with K.L. The Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant filed their application July 12, 2021 (the “Tenant’s Application”). The Tenant applied to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated August 02, 2021 (the “Notice”) and for more time to dispute the Notice.

The Landlord filed their application July 19, 2021 (the “Landlord’s Application”). The Landlord’s Application does not include any issues. During the hearing, the Landlord confirmed they are seeking an Order of Possession based on the Notice. I advised the parties that I would consider whether the Landlord is entitled to an Order of Possession based on the Notice on the Tenant’s Application in any event. The Landlord also sought to recover unpaid rent and utilities. The Tenant agreed to me hearing and deciding whether the Landlord is entitled to a Monetary Order for unpaid rent and utilities and therefore I have considered these issues.

### Preliminary Issue – K.L. as tenant or occupant

At the outset of the hearing, I asked the parties if K.L. is a tenant or occupant of the rental unit given K.L. is not named on the Landlord’s Application. The Tenant took the

position that K.L. is a tenant. The Landlord took the position that K.L. is not a tenant. Neither party pointed to documentary evidence to support their position. The parties do not have a written tenancy agreement. During the hearing, the parties agreed they have a verbal tenancy agreement and that this was originally between them alone. I note that the Notice is only addressed to the Tenant and not to K.L. In the circumstances, I find K.L. is not a tenant of the rental unit and is an occupant with no rights or obligations under the tenancy agreement. Given this, I have removed K.L. from the Tenant's Application and this is reflected in the style of cause.

#### Preliminary Issue – Service

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord confirmed receipt of the hearing package and evidence for the Tenant's Application.

The Tenant testified that they did not receive the hearing package or evidence for the Landlord's Application. The Landlord testified that they did not serve the hearing package on the Tenant and only served the Notice on the Tenant.

The Tenant confirmed that they were fine with me hearing and deciding whether the Landlord is entitled to a Monetary Order for unpaid rent and utilities despite not having received the hearing package for the Landlord's Application.

Pursuant to rule 3.14 of the Rules, the Landlord was required to serve their evidence on the Tenant. Given the testimony of the parties, I was not satisfied the Landlord did serve their evidence on the Tenant. Given this, I heard the parties on whether the Landlord's evidence should be admitted or excluded. The Landlord submitted that the evidence should be admitted because they told the Tenant what they needed to do. The Tenant submitted that they have not had an opportunity to review the evidence.

Pursuant to rule 3.17 of the Rules, I exclude the Landlord's evidence as I find it would be unfair to consider evidence that was not served on the Tenant.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

Tenant's Application:

1. Should the Tenant be given more time to dispute the Notice?
2. Should the Notice be cancelled?

Landlord's Application:

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent and utilities?

Background and Evidence

The parties agreed on the following. They have a verbal tenancy agreement which started April 26, 2018 and is a month-to-month tenancy. Rent is \$1,200.00 due on the first day of each month. The Tenant paid a \$600.00 security deposit and no pet damage deposit.

The Notice was submitted as evidence. The Notice states that the Tenant failed to pay \$1,200.00 in rent due June 01, 2021 and July 01, 2021. The Notice is addressed to the Tenant and refers to the rental unit, other than the city of the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of July 12, 2021. I asked the Tenant if they were taking issue with the form or content of the Notice and the Tenant said only in relation to the lack of clarity given it relates to June and July rent but was issued in August.

The parties agreed the Notice was served and received by the Tenant August 28, 2021.

The parties agreed \$1,200.00 in rent for June and \$1,200.00 for July was outstanding when the Notice was issued.

The parties agreed the next rent payment made by the Tenant after the Notice was issued was \$1,450.00 in September.

I asked the parties why both Applications were filed prior to the Notice being issued. The Tenant advised that they disputed the Notice based on a prior verbal discussion with the Landlord. The Landlord advised that they filed the Landlord's Application when they picked up the 10 Day Notice form at ServiceBC.

The Tenant confirmed that the issue on the dispute of the Notice is the reason rent was not paid in June and July. The Tenant testified that the parties had an agreement at the end of May that the Tenant would get two months free rent and that they then put this two months rent towards another rental. The Tenant testified that the agreement changed at the end of July and the Tenant was unable to pay rent because two months of rent had been paid for the other rental.

The Landlord agreed the parties had an agreement that the Tenant would get two months free rent if the Tenant moved out of the rental unit by July 01, 2021 and that the agreement ended when the Tenant did not move out July 01, 2021.

The parties agreed \$5,750.00 in rent is currently outstanding. The parties agreed \$164.26 in utilities is currently outstanding. The Tenant said they did not technically have authority to withhold these amounts.

The Landlord sought an Order of Possession effective one week after service on the Tenant.

The Tenant submitted text messages which support the Landlord's position that the agreement between the parties was that the Tenant would move out by July 01, 2021 and that two months rent was due July 01, 2021 when the Tenant did not move out.

### Analysis

In relation to the date the Applications were filed, I have considered the Notice despite both Applications being submitted prior to the Notice being issued because it was clear that the parties knew we would address the Notice at the hearing, the parties were prepared to address the Notice at the hearing and there is no prejudice to either party in me considering the Notice despite the Applications being filed prior to it being issued.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

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.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

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

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date...

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

Based on the testimony of the parties, I accept that the Tenant was required to pay \$1,200.00 in rent by the first of June and first of July pursuant to the verbal tenancy agreement.

Based on the testimony of the Landlord and text messages in evidence, I accept that the parties had an agreement that the Tenant would receive two months of rent if the Tenant moved out of the rental unit by July 01, 2021. There is no issue that the Tenant did not move out of the rental unit by July 01, 2021 because the Tenant continued to reside in the rental unit on the hearing date. Given this, I accept that the Tenant did not follow through with the agreement between the parties and therefore the agreement no longer applied as of July 02, 2021 when the Tenant had not moved out. I find this is supported by the testimony of the Landlord and the text messages in evidence. I find the Tenant was required to pay rent for June and July as of July 02, 2021.

The Tenant has not pointed to a valid basis for withholding rent for June and July. The Tenant not being able to pay rent because they paid money to someone else for another rental but then did not move is not a basis under the *Act* to withhold rent.

Given the above, I do not find that the Tenant had authority under the *Act* to withhold rent for June or July and I find the Tenant was required to pay rent for these months pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I accept that the Tenant had not paid rent for June and July when the Notice was issued because the parties agreed on this. Given the Tenant had not paid rent as required, the Landlord was entitled to serve them with the Notice.

I accept that the Notice was served and received by the Tenant August 28, 2021 because the parties agreed on this.

Upon a review of the Notice, I find there are two issues with it. First, it does not include the city of the rental unit. Second, it states that \$1,200.00 is owing when \$2,400.00 was owing. Pursuant to section 68 of the *Act*, I amend the Notice to include the city of the rental unit and to state that \$2,400.00 in rent was owing. I do so because the Tenant should have known the city in which the rental unit is located and the Notice includes the remainder of the rental unit address and therefore, I find it reasonable to amend the Notice. Further, the Tenant did know that \$2,400.00 in rent was owing when the Notice was issued because the Tenant acknowledged this at the hearing. I also note that the Tenant did not take issue with either of these items on the Notice when asked about the form and content of the Notice. The issue the Tenant did raise, about the Notice relating to June and July rent but being issued in August, is not an issue and is permitted. Considering the Notice and the amendments, I find the Notice complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

There is no evidence before me that the Tenant paid the \$2,400.00 outstanding within five days of receiving the Notice.

The Tenant disputed the Notice prior to receiving the Notice and therefore disputed the Notice in time. I find the request for more time to dispute the Notice is a moot point. However, the Tenant has not provided a valid basis for disputing the Notice as the Tenant acknowledged \$2,400.00 in rent was outstanding when the Notice was issued, did not testify that this amount was paid within five days of receiving the Notice and did not show that they had authority under the *Act* to withhold rent. Given this, the dispute is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

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...and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found that the Notice complies with section 52 of the *Act*. I have also dismissed the Tenant's dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective one week after service on the Tenant.

The parties agreed \$5,750.00 in rent and \$164.26 in utilities is currently outstanding and therefore I find the Landlord is entitled to recover these amounts. The Landlord is issued a Monetary Order for \$5,914.26. I note that the Landlord mentioned interest owed on unpaid rent during the hearing; however, the Landlord is not entitled to interest on these amounts.

### Conclusion

The Landlord is issued an Order of Possession effective one week after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$5,914.26. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 10, 2021

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Residential Tenancy Branch