



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Powell Street Holdings Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, OPC, FFL  
                              CNR, OLC  
                              CNR

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord.

The landlord has applied for the following relief:

- an Order of Possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- an Order of Possession for cause; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord's application was made by way of the Direct Request process, which was referred to this participatory hearing.

The tenant has made 2 applications, both seeking orders cancelling notices to end the tenancy for unpaid rent or utilities, as well as for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

During the course of the hearing I learned that the tenant has not served any of the tenant's evidentiary material to the landlord. The tenant advised that the landlord was served with a PDF of a Notice of Dispute Resolution Proceeding with a dispute

description. The landlord served the tenant with all of the landlord's evidentiary material by registered mail on November 10, 2021. The tenant did not dispute that.

Any evidence that a party wishes to rely on must be provided to the other party. Since the tenant has not done so, I decline to consider any of the tenant's evidence. All of the landlord's evidence has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, specifically with respect to having an emotional support dog?

#### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on July 15, 2021 and reverts to a month-to-month tenancy after July 31, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$1,050.00 is payable on the 1<sup>st</sup> day of each month. On July 16, 2021 the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single occupancy apartment in a complex containing 54 or 55 units. The landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on July 26, 2021 the tenant was served with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated July 26, 2021 and contains an effective date of vacancy of August 31, 2021. It was served by the landlord's agent and a co-worker by attaching it to the door of the rental unit. The reason for issuing it states: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The rental complex is a pet-free building and pets are not allowed. When the tenant applied for tenancy, the building manager made it clear that pets are not allowed and the tenant said that there were no pets, and signed the tenancy agreement and Addendum and initialled that portion of the Addendum. The next day, when moving in, the building manager, who lives in the building noticed that the tenant had a pit-bull dog and reminded the tenant that the building is pet free. The tenant replied that the dog is a service dog. The landlord's agent contacted the Residential Tenancy Branch about how to deal with it and received a response that if it is a service dog, the tenant has to provide certification. The tenant was asked for certification, but didn't provide it.

The landlord provided the tenant with a Breach letter on July 19, 2021 and a copy has been provided for this hearing. Another Breach letter was given on July 23, 2021, a copy also provided for this hearing. The tenant also stopped paying rent. The landlord's agents tried to nicely cooperate with the tenant indicating that rent had to be paid and that the building is pet free. The building manager also approached the tenant about the situation, but nothing happened and no rent was paid.

The tenant also had another person move into the rental unit, and now both are still occupying the rental unit with a dog and are not paying rent.

The landlord's agent further testified that the tenant was served with several 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The building manager posted each of them to the door of the rental unit, and copies have been provided for this hearing.

The first is dated August 3, 2021 and contains an effective date of vacancy of August 16, 2021 for unpaid rent in the amount of \$1,050.00 that was due on August 1, 2021.

The second is dated September 2, 2021 and contains an effective date of vacancy of September 15, 2021 for unpaid rent in the amount of \$1,050.00 that was due on September 1, 2021.

The third is dated October 4, 2021 and contains an effective date of vacancy of October 17, 2021 for unpaid rent in the amount of \$1,050.00 that was due on October 1, 2021.

The fourth is dated November 2, 2021 with an effective date of vacancy of November 15, 2021 for unpaid rent in the amount of \$1,050.00 that was due on November 1, 2021.

The tenant has not paid any of the rent, and another Notice has been served yesterday for unpaid rent for the month of December, 2021.

**The landlord's witness** is the building manager and caretaker who also lives on the rental property. The witness testified that he served each of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities by taping them to the door of the rental unit on August 3, 2021; September 2, 2021; October 4, 2021; November 2, 2021 and December 2, 2021.

The witness further testified that possibly the day the tenant moved in, the witness saw the tenant with a dog in the hallway and explained to the tenant that it is a pet free building. The tenant replied that it's not a pet but a service dog. The tenant provided a letter from a doctor stating that it was an emotional support dog, and a copy of that letter has been provided for this hearing.

The tenant paid half a month's rent for the first partial month at the beginning of the tenancy as well as a security deposit, but has not paid any rent since.

**The tenant** testified that since moving in, the tenant provided proper documentation needed about a service animal. Since the landlord's agents found out, the tenant has been threatened. The letter from the tenant's doctor is a legal document but is not a certificate. It suffices for flying and is recognized in the BC Human Rights Code whether certified or not.

Further, another person walked into the rental unit about a month ago without notice to the tenant, but the tenant does not know who that person was.

The tenant has been harassed by people knocking on the door, notices and letters being posted to the door, phone calls and approaching the tenant in the building.

The tenant has no money, but has tried to deal with it in the most civil way possible. The tenant hasn't been able to work, but just started a new job.

### Analysis

Firstly, the *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the tenancy agreement or the law:

**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.

Whether or not the tenant feels justified in keeping the dog, the tenant still has to pay the rent. The tenant did not dispute that no rent has been paid except for the first partial month of the tenancy.

The *Act* also states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to pay the rent in full, in which case the Notice has no effect, or to dispute the Notice. In this case, the tenant has disputed some of the Notices, but has not paid any rent.

Once served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the Notice. In this case, the tenant disputed the Notice, but has not provided any evidence to satisfy me that the tenant is entitled to have a dog in the pet-free building.

In the circumstances, I am not satisfied that the tenant has established any legal right to withhold rent. I have reviewed all of the notices given by the landlord and I find that they are all in the approved form and contain information required by the *Act*. Therefore, I dismiss the tenant's applications to cancel them and I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy in each of the notices has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I further find that the tenant owes the landlord rent for the months of August, September, October, November and December, 2021 in the amount of \$1,050.00 for each of those months, for a total of \$5,250.00.

Since the tenancy is ending, I also dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Since the landlord has been successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,350.00.

This order is final and binding and may be enforced.

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: December 03, 2021

---

Residential Tenancy Branch