



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Apartment Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, MNDCT, RP, OLC**
MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the Act pursuant to section 62;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;

- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant MM attended for all tenants ("the tenant"). The agent SM attended on behalf of the landlord ("the landlord"). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. No issues of service were raised. I find the landlord served the tenant as required under the Act. I find the tenant served the landlord as required under the Act.

Recording

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

Preliminary Issue 1

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

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.

Preliminary Issue # 2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice. I find that the tenant's primary application pertains to disputing a notice to end tenancy; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the tenant's claims, except for the tenant's application to dispute the landlord's Notice, are dismissed. I make no findings with respect to these claims. I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Preliminary Issue # 3

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$ \$23,860.00 to \$26,470.00 to include additional outstanding rent for the month of December 2020. The landlord's application pre-dated the due date for that month and as such the landlord's claim does not reflect the full outstanding rent.

Section 64(3)(c) of the *Act* and section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent for December 2021. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act* and Rule 4.2, I amended the landlord's application to increase the landlord's overall claim as requested. The total monetary order requested by the landlord is \$26,470.00 as well as \$100.00 reimbursement of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to cancelation of the 10 Day Notice?

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent as well as an award for reimbursement of the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 15, 2020. Rent is \$2,185.00 monthly payable on the 1st of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,092.50 which the landlord holds. A copy of the tenancy agreement was submitted.

The parties agreed they entered into a Settlement Agreement reflected in the Decision of an Arbitrator dated September 16, 2021 under a file number referenced on the first page. The Decision states in part as follows:

The terms of their settlement follow.

- 1. The Notice [10 Day Notice] is cancelled, and the tenancy shall continue until ended in accordance with the Act.*
- 2. The parties agree that the Tenant owes the Landlord the*

sum of \$19,915.00 representing rent outstanding as of the date of the hearing.

3. *By no later than October 31, 2021, the Tenant shall pay to the Landlord the sum of **\$22,100.00** representing outstanding rent as well as rent for October 2021.*
4. *Should the Tenant fail to make the aforementioned payment, the Landlord may issue another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.*

The parties agreed the tenant did not make the payment required under the Decision.

The landlord accordingly issued a 10 Day Notice dated November 2, 2021 and served that day upon the tenant. The tenant acknowledged service. A copy of the Notice was submitted as evidence which is in the RTB form.

The Notice stated the tenant owed \$23,860.00 in rent. The tenant filed an Application for Dispute Resolution on November 9, 2021, outside the 5-day period. The tenant stated she called the RTB and was told that it was acceptable for her to file late.

The landlord requested a Monetary Order of \$26,470.00 for outstanding rent to date as subsequently unpaid rent had accumulated. They submitted copies of the ledger and documentary evidence of the amount owing. The tenant acknowledged this amount is owing for rent.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Outstanding rent	\$26,470.00
Filing fee	\$100.00
Monetary Order Requested	\$26,570.00

The tenant stated they expected to received money within two weeks and requested that the 10 Day Notice be cancelled to allow them time to pay the rent.

The landlord requested an immediate Order of Possession.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I find the tenant, as acknowledged, was served with the 10 Day Notice on November 2, 2021 in accordance with the *Act*. I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant owed \$23,860.00 in rent at the time the Notice was issued. I accept the landlord's evidence that rent has subsequently accrued to bring the total owing to \$26,470.00. I find that the tenant acknowledged that they owed the rent and intended to pay. I find the tenant has no credible or valid dispute to the landlord's application.

A tenant is required to pay rent when it is due. Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes \$26,470.00 to the landlord for outstanding rent as claimed. The tenant's explanation for why they did not pay rent is not justification under the *Act* for failure to pay.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement.

Therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and I have dismissed the tenant's application, I must grant the landlord an Order of Possession.

Thus, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act, effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I grant the landlord a monetary award for \$26,470.00 for outstanding rent and award of \$100.00 for reimbursement of the filing fee for a total monetary order of **\$26,570.00**

Conclusion

I grant an **Order of Possession** to the landlord effective **two days** after service of this Order 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 grant a monetary order to the landlord in the amount of **\$26,570.00**.

The Orders must be served on the tenant. If the tenant fails to comply with the Orders, the Orders may be filed and enforced in the Courts of the Province of BC.

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 14, 2021

Residential Tenancy Branch