



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR-DR, MNR-DR, FFL, CNR

### Introduction

This hearing was convened as a result of cross applications.

The Tenants filed an Application for Dispute Resolution in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The female Tenant stated that the Tenant's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on August 09, 2021 were sent to the Landlord, via email, at three different locations. One package was sent to the Landlord's business address in Duncan, BC; one was sent to the Landlord's home address; and one was sent to the address provided on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. The female Tenant cited three Canada Post tracking numbers which corroborates this testimony.

On the basis of the undisputed evidence, I am satisfied that the aforementioned documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*. As the documents were properly served to the Landlord, the Tenants' evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Landlord.

The Landlord applied for a Direct Request Proceeding in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution.

The Residential Tenancy Branch concluded that both matters should be considered at this participatory hearing.

The female Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. She affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The female Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed she would not record any portion of these proceedings.

#### Preliminary Matter

The teleconference hearing was scheduled for 9:30 a.m. on this date. The female Tenant attended the hearing at the scheduled start time. By the time the teleconference was terminated at 9:56 a.m., the Landlord had not appeared.

I find that the Landlord failed to diligently pursue the Landlord's Application for Dispute Resolution application and I therefore dismiss the Landlord's Application, without leave to reapply.

#### Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set?

#### Background and Evidence

The female Tenant stated that:

- this tenancy began on June 31, 2012;
- the Tenants are currently required to pay monthly rent of \$734.44;

- in December of 2020 the Landlord was provided with post-dated cheques, in the amount of \$734.44, for each month of 2021;
- the Landlord cashed the cheques for January and February of 2021;
- the Landlord did not cash any of the cheques for March, April, May, June, and July of 2021;
- the Tenant became concerned about the post-dated cheques so she placed a “stop payment” on the cheques for March, April, May, June, and July of 2021;
- on July 29, 2021 the Landlord attempted to cash the post-dated cheques for March, April, May, June, July, and August of 2021;
- the Landlord was unable to cash the post-dated cheques for March, April, May, June, and July, of 2021, due to the “stop payment”;
- the Landlord was able to cash the rent cheque for August of 2021, as she had not put a “stop-payment” order on the cheque;
- on August 04, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenants;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the Tenants must vacate the rental unit by August 20, 2021;
- on August 05, 2021 she obtained a bank draft of \$3,672.20, which is the amount of rent still due for March, April, May, June, and July of 2021;
- as soon as she received the bank draft, she called the Landlord on several occasions in an attempt to deliver the bank draft to the Landlord;
- the Landlord answered one of those telephone calls but he just mumbled something and hung up without discussing payment; and
- she still has the bank draft which she is willing to provide to the Landlord.

### Analysis

On the basis of the testimony of the female Tenant, I find that the Tenants made reasonable efforts to pay all of the rent due for 2021 by provided the Landlord with post-dated rent cheques for each month of 2021.

On the basis of the testimony of the female Tenant, I find that by July 28, 2021 the Landlord had not cashed the post-dated rent cheques for March, April, May, June, and July of 2021. I therefore find it was reasonable for the Tenant to become concerned about those payments and to cancel the post-dated cheques on July 28, 2021.

On the basis of the testimony of the female Tenant, I find that rent was paid for August of 2021, by post-dated cheque.

I find that the Tenants' failure to pay rent March, April, May, June, and July of 2021 was due to the neglect//inaction of the Landlord. I find that the Landlord has an obligation to make reasonable efforts to collect the rent from the Tenants, which includes cashing post-dated cheques in a timely manner.

On the basis of the undisputed evidence, I find that the on August 04, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenants, which declared that the rental unit must be vacated by August 20, 2021.

Section 46(4)(a) of the Act stipulates that within 5 days of receiving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenancy may pay the overdue rent, in which case the notice has no effect.

On the basis of the testimony of the female Tenant, I find that she has a bank draft for the Landlord for all of the rent due for March, April, May, June, and July of 2021. I find that she made reasonable efforts to arrange to provide the bank draft to the Landlord shortly after being served with the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, but the Landlord did not make reasonable efforts to accept the payment.

As the Tenant made reasonable efforts to pay the overdue rent within five days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has no effect, pursuant to section 46(4)(a) of the Act. A landlord cannot, by inactivity or neglect, deny a tenant the right to repay rent that is outstanding.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has no effect, pursuant to section 46(4)(a) of the Act, I grant the Tenants' application to set aside this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

As the Tenants are required to pay rent for March, April, May, June, and July of 2021 and the Tenants acknowledge that rent has not yet been paid, I hereby Order the Tenants to pay that rent to the Landlord. I further Order the Tenants to either personally serve the rent payment to the Landlord or to mail the rent payment to the Landlord, via registered mail, no later than 5 days after the Tenants receive this written decision. This Order is made pursuant to section 62(1) of the Act.

In the event the Landlord does not receive the rent payment for March, April, May, June, and July of 2021 in the aforementioned timeframe, the Landlord retains the right to serve the Tenants with another Ten Day Notice to End Tenancy for Unpaid Rent or Utilities for any of those months.

### Conclusion

The Landlord's Application for Dispute Resolution has been dismissed, without leave to reapply.

The Tenants' application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings is granted. That Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord is granted a monetary Order for unpaid rent for March, April, May, June, and July of 2021, in the amount of \$3,672.20. In the event rent for those months are not paid by the Tenants, this Order may be served on the Tenants, filed with the Small Claims Court of British Columbia, and enforced by 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: December 14, 2021

---

Residential Tenancy Branch