



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRIGHT SIDE COMMUNITY HOMES  
FOUNDATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, DRI, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 15, 2021 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- an order regarding a disputed additional rent increase of \$2,322.00, pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, the landlord's lawyer, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 61 minutes.

The landlord's agent confirmed her name and spelling. She confirmed that she was the resident tenancy specialist for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She stated that the landlord owns the rental unit. She said that the landlord's lawyer had permission to speak on behalf of the landlord at this hearing. She confirmed that this decision could be sent to the landlord's lawyer's email address after the hearing.

The landlord's lawyer confirmed her name and spelling. She provided an email address for me to send this decision to the landlord after the hearing.

The tenant's agent confirmed his name and spelling. He stated that the tenant is his mother and he had permission to speak on her behalf. He provided his email address for me to send this decision to the tenant after the hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent, the landlord's lawyer, and the tenant's agent all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant's agent stated that no evidence was submitted by the tenant for this hearing.

The landlord's lawyer was given ample and additional time during this hearing to email and speak privately with the landlord's agent. The tenant's agent was given ample and additional time during this hearing to send text messages and make phone calls to his assistant. Both parties requested the above additional time during this hearing, in order to find and confirm information regarding this application.

#### Preliminary Issue – Severing a Portion of the Tenant's Application

The following RTB *Rules* are applicable and state (my emphasis added):

##### *2.3 Related issues*

*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.***

##### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rule 2.3 of the RTB *Rules of Procedure* allows me to sever issues that are not related to the tenant's main urgent application. The tenant applied for five different claims in her application.

I informed both parties that the tenant was provided with a priority hearing date, due to the urgent nature of her application to cancel the landlord's 10 Day Notice. I informed them that this was the central and most important, urgent issue to be dealt with at this hearing. After 61 minutes in this hearing, there was insufficient time to deal with the remainder of the tenant's application.

I notified the tenant's agent that the tenant's application to dispute a rent increase of \$2,322.00 and an order to comply, were dismissed with leave to reapply. I informed him that the tenant received a priority hearing date for the end of tenancy issue, as the tenant's monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenant's agent confirmed his understanding of same.

I also note that both parties provided insufficient documentary evidence regarding rent at this hearing, which is directly relevant to the above claims regarding a disputed additional rent increase and an order to comply.

I notified the tenant's agent that the tenant could file a new application and pay a new filing fee, if she wants to pursue her remaining claims above, in the future. He confirmed his understanding of same.

#### Issues to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's 10 Day Notice?

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord's lawyer stated that the tenant was served with a copy of the landlord's 10 Day Notice on September 16, 2021, by way of registered mail. She provided a Canada Post tracking number verbally during this hearing. She claimed that the tenant was deemed to have received with the 10 Day Notice on September 21, 2021, five days later. She said that the tenant did not provide an "extraordinary" reason to show why she disputed the notice past the five-day time limit. She explained that the tenant's late pickup of her mail should not prejudice the landlord.

The tenant's agent stated that his assistant dealt with this information. He said that he was told that the tenant picked up the 10 Day Notice by registered mail on September 28 or 29, 2021.

The tenant indicated in her online RTB application details that she received the 10 Day Notice on September 28, 2021, by way of registered mail. The tracking number provided by the landlord, indicates on the Canada Post website, that the mail was delivered and signed for on September 28, 2021.

Both parties agreed to the following facts. This tenancy began on October 15, 2009. A security deposit of \$300.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord's lawyer stated the following facts. Rent prior to July 1, 2021, was \$779.00 per month plus an additional \$34.00 for cable charges, totalling \$813.00. The above rent was a subsidy based on the tenant providing income information on an annual basis. As of July 1, 2021, the rent was \$1,553.00 per month because that is the current market rate. The tenant failed to provide bank statements to complete an income assessment for three months, so she was charged the full market rent, instead of a subsidized rent. The landlord's rent ledger shows this amount of \$1,553.00 being charged to the tenant. The landlord provided a copy of the written tenancy agreement,

which shows that the “economic rent” is \$1,300.00. However, the yearly economic rent amount changes every year based on the market.

The landlord’s lawyer made the following submissions. The landlord issued the 10 Day Notice, which has an effective move-out date of September 30, 2021, indicating that rent in the amount of \$2,322.00 was due on September 1, 2021. The tenant was charged full market rent of \$1,553.00 for each month from July to September 2021. The tenant paid \$813.00 for each month on July 14, August 16, and September 14, 2021. The tenant has an outstanding rent balance of \$740.00 owing for each month from July to September 2021, totalling \$2,220.00. The tenant has an outstanding cable television fee balance of \$34.00 owing for each month from July to September 2021, totalling \$102.00. The total amount owing for rent and cable fees from July to September 2021, is \$2,322.00 as noted on the 10 Day Notice rent amount. Cable fees of \$34.00 per month is considered “rent” because it is listed under the rent section of the parties’ tenancy agreement.

The landlord’s lawyer stated the following facts. The landlord seeks an order of possession based on the 10 Day Notice. The tenant failed to pay rent of \$1,553.00 for each month from October 2021 to February 2022. The tenant only paid \$813.00 for each month from October 2021 to January 2022, but there is no confirmation as to whether the tenant has paid for February 2022 rent yet. There were no rent receipts that the landlord is aware of or has provided as evidence, issued to the tenant indicating “use and occupancy only.” The 10 Day Notice states the effective date is September 30, 2021, so it is “clear” that the rent accepted by the landlord from the tenant, is for use and occupancy only. The tenant’s rent is related to her income, so full economic rent is due, or the tenant’s tenancy can be terminated, for her failure to provide annual income information. The landlord needs the tenant’s income assessment for her to apply for rental subsidy. The tenant now owes a balance of \$7,005.00 to the landlord.

The tenant’s agent testified regarding the following facts. The tenant disputes the landlord’s 10 Day Notice. The landlord charged for cable fees as part of rent, which is not allowed. The rent was \$813.00 per month previously, which included \$779.00 for rent and \$34.00 for cable fees. If the tenant has already paid for cable fees, then why is she being charged twice by the landlord. The information from the tenant’s notice of assessment was sent to and acknowledged by the landlord. The tenant’s agent tried to call the landlord, but the manager hung up on him. The tenant’s agent has attempted to contact the landlord, which is “impossible,” so he called the RTB, who said to serve the landlord by registered mail.

The tenant's agent stated the following facts. The tenant is his mother, she is 80 years old, English is her second language, she is a minority, she is disabled, and she has four comorbidities. The landlord is raising the rent during an economic crisis. There was a moratorium on rent increases from the Minister of B.C., during this global pandemic of covid. The landlord has not provided any rent records prior to 2018, which is a 9-year period. For 11 years, the tenant has been paying her rent. The tenant does not have a bank account and it is not in her name, so she has no control over it. The landlord did not issue the tenant with rent receipts for "use and occupancy only." No rent receipts have ever been issued by the landlord to the tenant. The landlord did not indicate to the tenant that rent was being accepted for "use and occupancy" or on a temporary basis.

### Analysis

I find that the tenant does not require more time to make an application to cancel the 10 Day Notice, as per section 66 of the *Act*. I find that the tenant filed this application to cancel the notice on September 29, 2021, which is within 5 days of when she received it on September 28, 2021, as per section 46(4) of the *Act*.

The Canada Post tracking number provided by the landlord, indicates on the Canada Post website, that the mail was delivered and signed for on September 28, 2021. The tenant indicated that she received the notice on September 28, 2021, in her online RTB application details.

I do not agree with the landlord's position that the mail was deemed received by the tenant on September 21, 2021, five days after the tenant received it on September 16, 2021. I find that deemed service provisions in section 90 of the *Act*, may be applicable if there is no actual date of receipt provided by the tenant. In this case, I accept that the tenant actually received the 10 Day Notice on September 28, 2021.

Further, I accept the affirmed testimony of the tenant's agent that the tenant is elderly, has disabilities and medical conditions, and English is her second language, so she may have been unable to pick up her mail in a timely manner.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Section 52(d) of the *Act* requires the notice to indicate the grounds for ending the tenancy. I find that the 10 Day Notice issued by the landlord was invalid.

I find that the tenant did not have an opportunity to pay the correct amount of rent in order to cancel the 10 Day Notice because the landlord indicated the incorrect amount

of rent on the notice. The 10 Day Notice indicates a rent amount of \$2,322.00, due on September 1, 2021. However, the landlord included \$102.00 for cable fees in the rent amount, which is not considered rent.

Although cable fees are referenced in the tenancy agreement, I find that they are separate fees from rent and should not be included in the “rent” due on the 10 Day Notice. The parties’ written tenancy agreement indicates in the section titled “description of the suite; services and amenities included with the rent” that “cablevision” has a “surcharge.” Therefore, cable fees are not included with the rent on the tenancy agreement, since there is a surcharge. Further, the \$34.00 for cable fees is not even included in that section of the tenancy agreement. Moreover, the separate section titled “rent payable; changes to the rent; financial information to be provided” the “initial economic rent” is listed as \$1,300.00. There is no reference to cable fees in that section, regarding rent.

I further find that the landlord failed to provide sufficient documentary evidence of the current amount of rent due for this tenancy, which the landlord claims is \$1,553.00. The landlord only provided a rent ledger from its internal records, which I find is insufficient. The landlord’s tenancy agreement indicates that rent is \$1,300.00 per month, for economic rent. The landlord did not provide sufficient documentary evidence regarding when the tenant failed to provide required income information for the rent subsidy, if or when the tenant was notified by the landlord that she did not qualify for a rent subsidy, if or when the market rate changed from \$1,300.00 in the tenancy agreement to \$1,553.00, or other such information. Therefore, I find that the landlord failed to show that the rent indicated on the 10 Day Notice was correct, since it was based on the \$1,553.00 amount calculated by the landlord.

I also find that the landlord failed to provide sufficient documentary evidence, such as rent receipts indicating “use and occupancy only” were issued to the tenant, when she paid rent after the effective date of the notice. Therefore, the landlord may have waived its right to enforce the 10 Day Notice against the tenant.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice. I find that the landlord’s 10 Day Notice does not comply with section 52 of the *Act*. The landlord’s 10 Day Notice, dated September 15, 2021, is cancelled and of no force or effect.

I find that the landlord is not entitled to a monetary order for rent, pursuant to section 55(4)(b) of the *Act*. I find that the landlord’s 10 Day Notice provided by the landlord

indicates the incorrect amount for rent. As noted above, I found that the landlord provided insufficient evidence of the current amount of rent due for this tenancy.

As the tenant was partially successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's application to dispute a rent increase of \$2,322.00 and an order to comply, is dismissed with leave to reapply.

The tenant does not require an extension of time to dispute the landlord's 10 Day Notice. The landlord's 10 Day Notice, dated September 15, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession based on the 10 Day Notice, dated September 15, 2021.

The landlord is not issued a monetary order for rent against the tenant.

I order the tenant to deduct \$100.00 on a one-time basis only, from future rent payable to the landlord, for this rental unit and tenancy, in full satisfaction of the monetary award for the filing fee.

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: February 10, 2022

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Residential Tenancy Branch