



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, CNR, LRE, LAT**

Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act;
4. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act; and,
5. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act.

The hearing was conducted via teleconference. The Landlord, DW, attended the hearing at the appointed date and time. The Tenant dialled into the teleconference call about 15 minutes into the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served a 10 Day Notice on the Tenant by posting the notice on her door on August 4, 2021. On September 21, 2021, this 10 Day Notice was found to be

deemed served on the Tenant on August 7, 2021 pursuant to Sections 88(g) and 90(c) of the Act.

This hearing was a new hearing set after a Review Request decision ordered it. The Tenant was unable to attend the previous hearing due to circumstances that could not be anticipated and were beyond her control.

The Landlord stated that the Tenant did not serve him with the Notice of Dispute Resolution Proceeding for this hearing, rather he received this information from the RTB. The Landlord advised that he has not received any evidence from the Tenant although I advised him there was evidence uploaded by the Tenant. As the Tenant's evidence was not served on the Landlord, I will not consider it in this hearing.

Preliminary Matter

The Tenant no longer resides in the rental unit. In the September 21, 2021 hearing, the Landlord confirmed that he took back possession of the rental unit, and changed the locks to the suite. The Tenant's application to cancel the One Month Notice, seeking an Order for the Landlord to comply with the Act, regulations and tenancy agreement, seeking an Order to suspend or set conditions on the Landlord's right to enter the rental unit, and seeking an Order for authorization to change the locks to the rental unit are no longer relevant and are dismissed without leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to a Monetary Order to recover the unpaid rent?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

From the September 21, 2021 decision, the monthly rent for the rental unit was \$1,500.00 payable on the first day of each month. A security deposit of \$700.00 was collected at the start of the tenancy and the Landlord continues to hold the deposit.

The Tenant is no longer residing in the rental unit. She was in a bad car accident and ended up in the hospital for one month. The Tenant's son died in the car accident. She does not dispute that she no longer resides in the rental unit.

The last full rent payment received by the Landlord was for the month of July 2021. The Landlord testified that he did not receive \$1,500.00 for rent in August 2021 or \$1,500.00 for rent in September 2021. The Landlord said he texted the Tenant about August's rent on the 4th, the 7th, and the 9th. He testified after the August 7th text, the Tenant told him that her ex-husband was going to pay her rent. He never received August's rent.

The Tenant stated she paid August's rent in cash. She said she did not upload the evidence about payment of August's rent. The Tenant testified that September's rent was in her hand, but as she was in the car accident, she did not make it home to pay it.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The Tenant was successful after her review request in having another hearing on this matter; however, the Tenant did not serve the Landlord with the Notice of Dispute Resolution package for this hearing, and did not serve her evidence on the Landlord.

For the Tenant's benefit, Section 26(1) of the Act states that 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.

The Landlord gave evidence that the Tenant did not pay rent in August or September 2021. The Tenant was deemed served with the 10 Day Notice on August 7, 2021. The Tenant gave evidence that she did pay rent in August 2021, but not in September 2021. The Landlord's evidence in the hearing was that he texted the Tenant on August 4th, 7th, and the 9th about August's rent. He stated he still had not received August's rent. I find the Landlord's evidence more credible compared to the Tenant's. The Tenant was

granted another hearing, but then did not serve the Landlord with the Notice of Dispute Resolution package for this hearing or her evidence. I did not consider the Tenant's evidence in this matter, although she uploaded evidence. The Tenant said she did not upload the evidence about the rent that she testified was paid in cash in August. As one of her claims was to cancel the 10 Day Notice served in August, then uploading evidence to rebut the claim of unpaid rent would be key. I find there is no evidence to support the Tenant's claim that she paid August's rent in cash. I dismiss the Tenant's application to cancel the 10 Day Notice without leave to re-apply.

As the Tenant failed in her application, I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. Section 55(1.1) of the Act reads as follows:

55 ...

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The Landlord's 10 Day Notice complies with the form and content requirements of Section 52 of the Act. The Landlord does not require an Order of Possession for the rental unit, but I find pursuant to Section 55(1.1) of the Act that he is entitled to a Monetary Order for the unpaid rent amount of \$3,000.00. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit in partial satisfaction of the monetary award. I issue a Monetary Order to the Landlord for the balance of unpaid rent for \$2,300.00.

As I was asked, I include contact information for the Information Officer team at the RTB. They can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant's entire application is dismissed without leave to re-apply.

I grant a Monetary Order to the Landlord in the amount of \$2,300.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: March 24, 2022

Residential Tenancy Branch