



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
Tenant, R.C.	310055380	CNR, FFT
Landlord, J.L.	310048789	OPR-DR, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated November 15, 2021 ("10 Day Notice"); and
- recovery of her \$100.00 application filing fee;

The Landlord filed claims for:

- an order of possession for unpaid rent, further to having served the 10 Day Notice to the Tenant; and
- recovery of his \$100.00 application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; ("Rules") however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is either Party eligible for recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on February 5, 2008, and ran to February 28, 2010, and then operated on a periodic or month-to-month basis. They agreed the Tenant is required by the tenancy agreement to pay the Landlord a monthly rent of \$1,350.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$675.00, and no pet damage deposit. The Landlord confirmed that he still holds the Tenant's security deposit in full.

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated November 15, 2021, which has the rental unit address, and was served via registered mail on November 15, 2021. The 10 Day Notice has an effective vacancy date of November 25, 2021, which is automatically corrected by the Act to be November 30, 2021. The Parties agreed that the 10 Day Notice was served on the ground that the Tenant failed to pay \$12,480.00 when it was due to the Landlord on November 1, 2021.

I asked the Landlord to explain his claim, and he said the following:

[The Tenant] has been postponing paying rent all these years. One year after she moved in, it was delayed rent all the time. I tried to believe what she said and to be helpful, but the amounts have accumulated so much. We can't afford to have this money lost, because of this issue, so, we need to take the house back. This is why we need to take the property back.

The Tenant responded:

I'm not going to deny there's been months of difficulties over the years, but from the beginning [the Landlord] presented himself as a kind, caring agent He said,

'Don't worry about it', when I couldn't pay. As things got worse, I lost my husband in 2018, that's when things fell apart. I've had major health problems, which don't mean I don't have to pay rent, but he has been so kind, saying, 'Don't worry'. It kept getting worse. And then the pandemic - that caused great hardship, as I couldn't find anyone to rent the other room. It lasted this long. I explained to [the Landlord] that – we had a good conversation last year, regarding a settlement.

In March 2021, when there was a possibility that another issue became apparent because of my husband's death – a settlement was going to go through - and then we would look at it. He wanted a payment schedule, which I didn't want. What's the sense of that when I won't be able to keep them? I never stopped doing anything. I paid what I could. The payments started to increase, as I got someone else to move in, and I still have one bedroom that needs someone. But we have to have this issue settled before I can do that. My other tenant is 69 years old.

The way [the Landlord] sent me these emails – I was on so much medication that I left it for him to take care of. All of a sudden, he's asking for \$12,480.00 or get out. It is impossible to happen. I cannot come up with that kind of money that I owe. The spreadsheet in my evidence is from his emails that I had paid and owed. Then I went through bank statements and etransfers to calculate a number, but I can't do it, it doesn't match up. There are other things that are missing, such as allegations . . . I didn't include a lot, because I didn't think they were relevant, until I got his evidence package. There were receipts. . . prior to my getting an iphone – I didn't do etransfers prior to that. There are some direct deposit slips that I can't see. Some got destroyed in an accident. I was hoping that he would provide some sort of bank statement on his side to prove it. The stress is not good for anybody.

I asked the Landlord how he calculated the amount he is claiming, and he said:

Keeping records, first of all. All these years, I've been sending her emails saying what she's paid and what she owes, and I submitted those records. Even though she's late in rent, she eventually paid up and reported issues in the house, and we sent a handyman to fix issues. She doesn't know how much rent she owes. She even keeps receipts for work done 10 - 12 years ago, but no record of rent payment and how much she owes to me.

The issue is that she owes us a huge amount of money. We can't subsidize or let

her stay in the house for free. It is not acceptable.

Also, every time when I send her an email about how much she has paid and owing, she gets back to me telling me excuses – the reason she's late and how she's making it up so, and stuff like that, but she never keeps up her promise. If you check my record. I started from December 1, 2017, in which she owes \$1,350.00, but she paid \$325.00 on December 12th – that's the smallest amount she owed. But since then, it has been accumulating from \$3,000.00 to \$4,000.00, to the middle of ... sometimes up to \$5,000.00. But in March 2020, it keeps adding up. Then towards the beginning of 2021, it's up to \$8,500.00, and it's getting more and more, and now she owes \$13,455.00. She takes the chance of adding up the amount of rent owed. I cannot see any intention of her to pay the rent she owes. And it keeps adding up.

The Landlord submitted a ledger of the rent paid by the Tenant in this tenancy starting on December 1, 2017, and running to November 15, 2021 ("Ledger"). This Ledger includes the rent due on what date, the amount paid and on what date, and the remaining rent owing. The Landlord indicated that the Tenant had owed \$1,350.00 on December 1, 2017, and that she paid the Landlord \$325.00 on December 12, 2017. This left a balance owing for December of \$1,025.00.

The Tenant said:

Well, if you look at the evidence sheet that I submitted in excel, even the current claim payment - if you look at the last months - there's a lot when I paid more than \$1,350.00. I'm trying my very best. There's time when I don't have food, because I'm trying to pay him. The pandemic... how can I ask a student to move in and to give me money to pay him. I need that reassurance – that's how the rent was paid.

I take great offense; I don't know why he would say I would leave information out of my bank statements to show how much money I have paid on a regular basis. I don't have any record other than what he's typed out on a computer. They don't match up with my numbers. It would be impossible for me to do if my information isn't correct. 'She doesn't know how much she owes.' It's not my fault. How it got transcribed as to how much was paid. I don't know if you have the time to go through those emails. It took hours and hours for us to do it and it don't match. For him to say she left this out, and took this payment, and didn't apply it to

another month. How am I supposed to know that? My daughter is furious with me for allowing it to get to this point. She won't allow it to happen again. I have to agree. I can't argue. I'm looking for a solution where neither of us lose. He has made me out to be a bad person. I don't have a new car, I got it from . . . I have very little.

I offered the Parties the opportunity to make any last statements before the hearing ended, and they said the following, starting with the Landlord.

What she has just said is not relevant to how she plans to settle the amount she owes. She didn't say anything about that. She never corrected me, if there is anything wrong with what I submitted. And it started from June 9, 2018. When I send her two or three emails, she answers back one time - even if I send 10 emails. But she never confirms with me. It's her responsibility to keep track of how much she paid and how much she owes. All the time she tries to change subjects and not answer your question. She owes us so much money, and she's supposed to move out.

Her statements that she's trying her best to pay more than she owes. On November 15 it's \$12,480.00 that she owed. And up to February 24th, she owes \$13,455.00. We're now in March, and we add another \$1,350.00 of rent. It's close to \$15,000.00 she is now owing. All this time, she has not suggested any way of paying this rent owing. We want to take the property back.

The Tenant said:

There are more payments not calculated, but that's irrelevant. He makes it very clear that I pay \$1,350.00 a month of rent, which is too cheap. And I think he's doing this because they want new tenants for more than this. It's just not fair. I would be more than happy to come up with a payment schedule and not by numbers he's just come up with. But he's not offering any kind of bank statement.

I asked the Landlord how much rent the Tenant has paid since he served her with the 10 Day Notice. These are the figures he provided, with no dispute from the Tenant.

Date Rent Due	Monthly Rent Owed	Amount Owing	Amount Received	Amount Owing
Sept 2021				\$11,030.00

Oct 2021	\$1,350.00	\$12,380.00	\$1,250.00	\$11,130.00
Nov 2021	\$1,350.00	\$12,480.00	\$0.00	\$12,480.00
Dec. 2021	\$1,350.00	\$13,830.00	\$1,000.00	\$12,830.00
Jan 2022	\$1,350.00	\$14,180.00	\$1,375.00	\$12,805.00
Feb 2022	\$1,350.00	\$14,155.00	\$700.00	\$13,455.00
March 2022	\$1,350.00	\$14,805.00	\$0.00	\$14,805.00
		TOTAL		\$14,805.00

The Tenant submitted some of her bank statements and an “Accounting Sheet”, which lists some inconsistencies in the Landlord’s Ledger. However, the Tenant did not provide all of the bank statements to support her Accounting Sheet. For instance, her bank statements indicate that she paid the Landlord \$875.00 on June 1, 2020, and \$1,850.00 on June 25, 2020, which totals \$2,725.00. However, in the Accounting Sheet, it is not clear if the \$875.00 was paid at the end of May or in June 2020. Further, the Tenant did not submit a bank statement for May 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on November 20, 2021, five days after it was sent to her by registered mail on November 15, 2021.

I find that the Ledger gives a comprehensive record of the Parties’ rent transactions, and that the Tenant did not question any of the figures provided by the Landlord; however, the Tenant said she wished the Landlord had backed up the Ledger with copies of his banking statements.

I find it is a tenant's obligation to know how much rent she owes and when it is due. However, in the evidence before me, I find that the Tenant paid what she could, when she could, but did not keep track of how much she owed the Landlord. She said: "I was on so much medication that I left it for him to take care of. All of a sudden, he's asking for \$12,480.00 or get out."

I find that the Tenant acknowledged that she owes the Landlord a lot of unpaid rent, but she has no way to determine how much that is. I find the Landlord has kept reasonable records of what the Tenant has and has not paid throughout the last four and a half years. In contrast, the Tenant provided partial and inconsistent evidence, and she said that she left it up to the Landlord to take care of these details. I find that the Landlord did keep track of these details, and given the inconsistencies in the Tenant's evidence, I find that the Landlord's evidence is more reliable and credible than is that of the Tenant.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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;

Section 26 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 the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$14,805.00 in unpaid rent as of March 1, 2022. The Tenant did not provide any evidence that she had a right under the Act to deduct any portion of her rent from what was owed to the Landlord.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$12,480.00 is incorrect, as it was based on the outstanding rent amount for November 15, 2021. Further, the Landlord stated that the amount owing is now up to \$14,805.00, as the Tenant has not paid full rent since the 10 Day Notice was served.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Landlord's application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay her monthly rent owing in full. I find no

prejudice to the Tenant, as she should be aware of how much rent she has or has not paid, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$12,480.00 to \$14,805.00.

The 10 Day Notice was signed, dated, it had the rental unit address and the effective vacancy date of November 25, 2021. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant; as noted above, the 10 Day Notice was deemed served on the Tenant on November 20, 2021. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to November 30, 2021. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not testify as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$14,805.00 in rent owed for the prior four and a half years. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply, pursuant to section 62 of the Act.

I find that the Landlord is successful in his application for an order of possession and for a monetary order for unpaid rent, as he provided sufficient evidence to prove these on a balance of probabilities. I, therefore, award the Landlord with an Order of Possession; however, since the effective vacancy date has passed, the **Order of Possession** will be **effective two days after it is served** to the Tenant.

Further, I award the Landlord with **\$14,805.00** from the Tenant in unpaid rent, pursuant to sections 26, 46, and 67 of the Act. Given his success in his application, I also award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act, for a total award of **\$14,905.00**.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$675.00** security deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's \$675.00 security deposit, and I award the Landlord a **Monetary Order** of **\$14,230.00** for the remaining amount owed by the Tenant to the Landlord, pursuant to section 63 of the Act.

Conclusion

I have found that the Tenant has not paid rent consistently or in full for more than the last four years, so her application to cancel the 10 Day Notice is dismissed without leave to reapply. The Landlord is successful in his application for an order of possession and a monetary order for unpaid rent, as the Landlord provided sufficient evidence to prove his case in these matters on a balance of probabilities. The Landlord is also awarded recovery of his \$100.00 application filing fee from the Tenant.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord has established a monetary claim of **\$14,905.00**, including recovery of his **\$100.00** application filing fee from the Tenant. I authorize the Landlord to retain the Tenant's full security deposit of **\$675.00** in partial satisfaction of the claim. The Landlord is granted a Monetary Order under section 67 of **\$14,230.00** for the balance owed by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 16, 2022

Residential Tenancy Branch