



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1269123 B.C. LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord's application: OPR FFL  
Tenant's application: CNR OLC LRE FFT

This hearing dealt with an Application for Dispute Resolution (application) from both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 10, 2021 (10 Day Notice) and for the filing fee. The tenant applied to cancel the 10 Day Notice, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order to suspend or set limits on the landlord's right to enter the rental unit, and to recover the cost of the filing fee.

The tenant and landlord attended the teleconference hearing. The parties were affirmed and given the opportunity to testify and present any evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The parties were also given the opportunity to ask questions during the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

There were no service issues that prevented the hearing from proceeding.

### **Preliminary and Procedural Matters**

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

RTB Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on their application, the most urgent of which is the application to cancel the 10 Day Notice and for the filing fee. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 10 Day Notice and the tenant's application to recover the cost of the filing fee, and the landlord's application at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

#### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession?
- Is either party entitled to the recovery of the filing fee under the Act?

#### Background and Evidence

The parties agreed that the tenancy began on August 1, 2019 and that monthly rent is \$2,500.00 due on the first day of each month. A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice is dated September 10, 2021. The effective vacancy date listed on the 10 Day Notice was September 20, 2021. The amount listed as owing on the 10 Day Notice was \$2,500.00 for September 1, 2021. The tenant testified that they did not receive the 10 Day Notice until seeing the 10 Day Notice in the evidence supplied by the landlord for their Application, which the tenant stated they received on March 10, 2022.

The landlord testified that they served the 10 Day Notice by putting the 10 Day Notice through the tenant's mail slot in September 2021. The landlord referred to a blurry photo that is in black and white and contradicts the landlord's testimony as the photo is dated 3/9/22 at 11:50 a.m. so would not be related to the 10 Day Notice dated September 10, 2021. The landlord submitted no documentary evidence to support that the tenant was ever served with the 10 Day Notice.

Based on the evidence before me, the parties were advised that I was not satisfied that the tenant was served with the 10 Day Notice as claimed by the landlord and dismissed the landlord's application as a result, which I will address further below.

### Analysis

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

**10 Day Notice issued by landlord** – I find the landlord's testimony contradicts the photo evidence presented. I also find the photo evidence to be blurry and of little weight but does contain a date that does not match service of the 10 Day Notice in September 2021. The photo has a date of March 9, 2022, which is one day after the landlord was given their Notice of Hearing document to serve on the tenant.

As a result of the above, I prefer the tenant's testimony that they were not served with the 10 Day Notice as the landlord claims. Therefore, **I cancel** the 10 Day Notice as I find the landlord has provided sufficient evidence to support it was served as claimed.

The 10 Day Notice dated September 10, 2021 is of no force effect.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

Should the tenant fail to pay rent by the date it is due, the landlord may issue a new 10 Day Notice which must be served in accordance with the Act. The landlord may wish to rely on registered mail in the future when serving documents.

As the landlord's claim has been dismissed, I do not grant the landlord their filing fee.

As the tenant's application had merit, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month of rent in full satisfaction of the recovery of the cost of the filing fee. I make all orders pursuant to section 62(3) of the Act.

### Conclusion

The 10 Day Notice dated September 10, 2021, issued by the landlord has been cancelled and is of no force or effect.

The tenant has been granted a one-time rent reduction in the amount of \$100.00 for the recovery of their filing fee.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to both parties as indicated above.

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: April 8, 2022

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Residential Tenancy Branch