



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** OPR-DR, MNR-DR, FFL

### Introduction

On August 25, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the tenant’s application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The Adjudicator adjourned the direct request for the following reason:

I find that the street name of the rental address on the tenancy agreement does not match the street name of the rental address on the Application or on the 10 Day Notice. I find I cannot confirm the rental unit address and a participatory hearing is necessary to address the issue.

I have been delegated authority under the *Act* to consider the landlord’s application for:

- A monetary award for the unpaid rent pursuant to s. 67 of the Act.
- An Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act.
- Recovery of the filing fee for this application pursuant to section 72 of the Act.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:27 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on August 26, 2022 . The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on August 31, 2022, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

The hearing proceeded in the absence of the tenant pursuant to Rule 7.3 of the Rules.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$800.00;
- 3) recover the filing fee;

If the landlord is unsuccessful in his application is the tenant entitled to:

- 1) an order cancelling the Notice;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting December 1, 2019 and ending May 30, 2020. At the end of the term the tenancy continued on a month-to-month basis. Monthly rent is \$1000.00 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$500.00. The landlords still retain this deposit. The tenant lives in the rental unit with her daughter.

The landlord explained the discrepancy between the addresses recorded on the 10 Day Notice and the Tenancy Agreement. There are three (3) buildings housed on the same property. The property abuts two streets, Street A and Street B. Two (2) of the buildings face Street A and one (1) building faces Street B. The tenant resides in the building that faces Street B, which has a different street address from the other two (2) buildings. The landlord's assistant, not realizing there were two different addresses assigned to the property, incorrectly recorded Street A in the Tenancy Agreement as the address of record but should have used Street B. The landlord concluded by stating that it is Post Office that assigns the mailing addresses.

It is the landlord's undisputed affirmed testimony that the correct street address was used in the 10 Day Notice and all Canada Post registered mail. The mail was sent to the correct Street B address, received, and signed for by the tenant as confirmed by Canada Post tracking confirmation uploaded to the Residential Tenancy Branch (the "**RTB**") by the landlord.

The landlord testified that since purchasing the property over a year ago, the tenants made repeated late rent payments despite being spoken to. The landlord uploaded a note from the tenant's daughter who apologized for the late July rent and provided some reasons for the late rent payment. The landlord stated the tenant provided many excuses over the months for not paying the rent on time. The landlord uploaded the undated note he received in his mailbox from the tenant's daughter telling him: "Aug rent will be \$515 Aug 12<sup>th</sup> and \$500 Aug 26<sup>th</sup>!"

The landlord stated that he relies on rent payments made on the 1<sup>st</sup> of each month to meet his financial obligations and simply cannot rely on the tenant to pay the rent consistently on time.

The landlord stated on July 29, 2022 he received a request from the tenant to stay until the end of August in order to secure a residence, which again he relayed to the RTB. At the time of the hearing, the tenant and her daughter remain in the rental unit.

Since receiving the 10 Day Notice, the tenant paid the rental arrears in full. A partial payment of the rental arrears was received on July 15, 2022 in the amount of \$500. The landlord submitted a receipt confirming the payment.

At the time of the hearing, the landlord testified that there was no outstanding rent owing. The tenant paid rent, in full, for August and September. The landlord stated that although the tenant paid rent, the landlord states he was clear that he did not intend to reinstate the tenancy. The landlord requested a possession date of October 28, 2022 if he was successful in his application to allow the tenant time to find alternate accommodations.

### **Analysis**

Based on the documentary evidence and the testimony before me for consideration, I am satisfied that a tenancy to which the Act applies exists between the parties and that rent in the amount of \$1000.00 is due on the first day of each month under the tenancy agreement.

The 10 Day Notice was sent to the Tenant on July 6, 2022 by Canada Post Registered Mail. The Canada Post Tracking Delivery Status Report submitted to file confirms the Registered letter was received and signed for by the tenant on July 8, 2022.

Section 46(4) of the Act states that if a tenant who has received a 10 Day Notice does not either pay the overdue rent or make an application for dispute resolution within 5 days after the date the tenant receives the notice (July 13, 2022), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

I find that the tenant failed to dispute the 10-Day Notice within the legislative time frame set out under section 46(4).

Having made the above referenced finding, I now turn my mind to whether or not the tenant paid the overdue rent within 5 days after being served with the 10 Day Notice. If the tenant paid the overdue rent by July 13, 2022 the 10 Day Notice is rendered of no force and effect negating the need for the tenant to file an application seeking its cancellation pursuant to section 46(4)(a) of the Act.

The outstanding rent amount listed on the 10 Day Notice is \$800.00. The tenant made a partial payment of \$500.00 to the landlord on July 15, 2022 and was issued a receipt for that payment. This partial payment was not made within the time set out under section 46(4) of the Act. Further, it is important to note, the Act requires full payment of overdue rent within five (5) days after being served with the 10 Day Notice.

I accept as fact, the landlord's undisputed affirmed testimony about the differing addresses on the tenancy agreement and the 10 Day Notice. All three (3) buildings are on the same property and the post office assigned a different address to one of the buildings and the assistant was unaware of this at the time the tenancy agreement was signed. In the landlord's words, the building has not moved. The tenant knew or should have known what building she lives in.

A copy of the 10 Day Notice was submitted for this hearing. The 10 Day Notice is on the current version of the written approved form and is signed and dated. It gives the address of the rental unit and states the effective date and the grounds for issuance of the Notice. find the Notice complies with s. 52 of the Act

I find the tenant is conclusively presumed under s. 46(5) of the Act to have accepted the 10 Day Notice and the tenancy therefore ended on July 18, 2022. The tenant is overholding the rental unit; therefore, Pursuant to s. 55 (2)(b) , I order that the tenant deliver vacant possession of the rental unit to the landlords within two (2) days of being served with a copy of this decision and attached order(s) by the landlord. This Order may be served on the tenant and filed with the Supreme Court of British Columbia and enforced as an Order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Section 55(1.1) of the Act states that if the 10 Day Notice is upheld, and the 10 Day Notice complies with section 52 of the Act, the director must grant an order requiring the payment of unpaid rent. The landlord testified there is no outstanding rent as of the date of this hearing; therefore, I dismiss the landlord's application for a monetary order for unpaid rent, without leave to reapply.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover his filing fee from the tenant.

### **Conclusion**

The landlord is granted an order of possession and a monetary order to recover the cost of 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: October 4, 2022