



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FORTH GEN HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, OLC

### Introduction

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

- more time to make an application to cancel the landlord's multiple Ten Day Notices to End Tenancy for Unpaid Rent or Utilities ("10 Day Notices"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notices, pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 26 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 11:00 a.m. and ended at 11:26 a.m. I monitored the teleconference line throughout this hearing. 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's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed his name and spelling. He provided his email address for me to send this decision to the landlord after this hearing.

The landlord's agent confirmed that he is the property administrator, employed by the landlord company ("landlord") named in this application and that he had permission to speak on its behalf. He said that the landlord owns the rental unit. He provided the legal name of the landlord and the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“*Rules*”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord’s agent. He had an opportunity to ask questions. He confirmed that he was ready to proceed with this hearing. He did not make any adjournment or accommodation requests.

The landlord’s agent confirmed receipt of the tenant’s application for dispute resolution hearing package and amendments. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant’s application and amendments.

The landlord’s agent stated that the tenant was served with the landlord’s first evidence package on October 18, 2022, and second evidence package on October 19, 2022. He provided two Canada Post tracking numbers verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s first evidence package on October 23, 2022, and second evidence package on October 24, 2022, five days after each of their registered mailings. I considered both of the landlord’s evidence packages at the hearing and in this decision because it was deemed received by the tenant at least 7 days prior to this hearing on November 1, 2022, in accordance with Rule 3.15 of the RTB *Rules*.

The landlord’s agent stated that the tenant was served with the landlord’s 10 Day Notice, dated June 2, 2022 (“10 Day Notice”) on the same date, by way of posting it to the rental unit door. He said that the effective move-out date on the notice is June 15, 2022. In accordance with section 88 of the *Act*, I find that the tenant was deemed served with the landlord’s 10 Day Notice on June 5, 2022, three days after its posting. In this application, the tenant claimed that he received the 10 Day Notice on June 2, 2022, by way of posting to his door, and he provided a copy of the notice for this hearing.

#### Preliminary Issue – Dismissal of Tenant’s Application

Rule 7.3 of the RTB *Rules* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to a monetary order for unpaid rent, without filing a separate application for same, if the notice meets the requirements of section 52 of the *Act*.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on September 1, 2021. Monthly rent in the current amount of \$1,878.00 is payable on the first day of each month. The rent was increased from the original amount of \$1,850.00, by \$28.00, to a total of \$1,878.00 per month, effective on September 1, 2022, pursuant to a notice of rent increase, dated April 25, 2022 ("NRI"), which was hand delivered to the tenant on the same date by the landlord's resident manager. A security deposit of \$925.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's agent stated the following facts. The landlord previously filed a direct request ex-parte paper application against the tenant for an order of possession for unpaid rent and a monetary order for unpaid rent, which was dismissed with leave to

reapply by an Adjudicator, pursuant to a decision, dated July 18, 2022. The file number for that application appears on the cover page of this decision. The Adjudicator dismissed the landlord's application because the name of the landlord on the tenancy agreement and the direct request application were different, and the landlord failed to provide sufficient ownership documentation. The landlord provided a land title certificate, a property assessment, and a letter, dated January 22, 2022, to all residents at the rental property introducing the landlord as the new owner. The landlord provided the above documents for this hearing, to show that the landlord purchased the rental unit and rental building from the previous landlord and owner named in the tenancy agreement.

The landlord's agent testified regarding the following facts. The landlord issued the 10 Day Notice for unpaid rent of \$1,850.00 due on June 1, 2022. The tenant paid June 2022 rent of \$1,850.00 to the landlord late on July 4, 2022. The tenant paid partial rent of \$1,600.00 (of the \$1,850.00 owed) to the landlord for August 2022 late on October 4, 2022, leaving a balance of \$250.00 outstanding. The tenant failed to pay \$1,878.00 in rent for each month in September and October 2022. The landlord provided rent receipts to the tenant on July 4, 2022, August 2, 2022, and October 4, 2022, indicating "use and occupancy only," that the tenancy was not being reinstated, and the 10 Day Notices were still valid. In the October 4, 2022 rent receipt issued to the tenant, the landlord indicated the balance of \$250.00 owing for August 2022 rent and the unpaid rent of \$1,878.00 for each month owing for September and October 2022. The landlord seeks an immediate order of possession and a monetary order for unpaid rent of \$4,006.00 total, against the tenant.

### Analysis

I find that the landlord provided sufficient evidence in the form of a land title certificate, provincial property assessment, and letter to residents at the rental property, that it is the current and legal owner of the rental unit.

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. In this application, the tenant claimed that he received the 10 Day Notice on June 2, 2022. The tenant was deemed to have received the notice on June 5, 2022. The tenant filed this application to dispute the notice on June 15, 2022. Therefore, he was not within the five-day time limit to dispute the notice. The tenant applied for more time to dispute the notice but did not appear at this hearing to present

his application or to indicate any exceptional circumstances as to why he could not dispute the notice in time.

On a balance of probabilities, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$1,850.00 due on June 1, 2022, within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue his application, led to the end of this tenancy on June 15, 2022, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 15, 2022.

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (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.*

As noted above, I dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Since the effective date on the notice has long passed on June 15, 2022, and the tenant has failed to pay full rent from August to October 2022, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case, required the tenant to pay by the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation*, or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$250.00 for August 2022, \$1,878.00 for September 2022, and \$1,878.00 for October 2022, totalling \$4,006.00. I find that the landlord's agent provided affirmed testimony of

issuing a legal NRI to the tenant on April 25, 2022, which increased the monthly rent from the original amount of \$1,850.00 in the tenancy agreement, to the new amount of \$1,878.00, effective September 1, 2022. Therefore, I find that the landlord is entitled to \$4,006.00 total in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$925.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$925.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy. I issue a monetary order of \$3,081.00 to the landlord, for the balance owing.

I find that the landlord did not waive its right to enforce the 10 Day Notice, by accepting rent from the tenant after the effective date of June 15, 2022, on the notice. The landlord did not withdraw its 10 Day Notice against the tenant. The landlord attended this hearing and pursued an order of possession based on the 10 Day Notice, against the tenant. The landlord issued rent receipts to the tenant in July, August and October 2022, and provided copies of same, indicating the rent was being accepted for use and occupancy only, did not reinstate the tenancy, did not cancel multiple 10 Day Notices against the tenant, and the tenant still owed rent from August to October 2022 to the landlord.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$925.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,081.00 against the tenant. 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 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 *Residential Tenancy Act*.

Dated: November 01, 2022

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Residential Tenancy Branch