



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR (Tenant)  
                              OPU-DR, MNU-DR, FFL (Landlords)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed two applications, the first on July 08, 2022, and the second on September 07, 2022. The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated July 07, 2022 (the “One Month Notice”)
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated September 04, 2022 (the “10 Day Notice”)

The Landlords filed their application September 13, 2022. The Landlords applied as follows:

- For an Order of Possession based on the 10 Day Notice
- To recover unpaid rent
- To recover the filing fee

The Landlords and Tenant appeared at the hearing. The Tenant had an advocate appear with them. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). Landlord A.H. and the Tenant provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord acknowledged receipt of the hearing packages for the Tenant's applications. The Landlord confirmed they were prepared to proceed with the Tenant's applications on the hearing date. The Landlord confirmed receipt of the Tenant's evidence.

The Tenant had not received a hearing package for the Landlord's application. The Landlord advised they did not serve the hearing package for their application on the Tenant. Given this, the Landlord's application is dismissed with leave to re-apply, other than in relation to the request to recover the filing fee which is dismissed without leave to re-apply.

The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Should the 10 Day Notice be cancelled?

#### Background and Evidence

Two tenancy agreements were submitted, the original tenancy agreement and a second tenancy agreement.

The original tenancy agreement was between the Landlords and Tenant. It started in August of 2016 and was a month-to-month tenancy. Rent was \$940.00 per month. The agreement was signed by all three parties. The agreement had an addendum that stated the Tenant was to be the only person living in the rental unit.

The second tenancy agreement is between the Landlords, Tenant and C.R., the Tenant's sister. It has the same start date as the original tenancy agreement and is a month-to-month tenancy. Rent is \$1,500.00 per month due on the first day of each month starting September 01, 2022. The agreement is signed by the Landlords, Tenant and C.R. The agreement has an addendum.

### ***One Month Notice***

The One Month Notice was issued on the ground of the Tenant assigning or subletting the rental unit without permission. The parties agreed the One Month Notice was served on the Tenant, and received, July 07, 2022. The Tenant disputed the Notice July 08, 2022. The Landlord testified that the One Month Notice was issued because the Tenant allowed their sister, C.R., to move into the rental unit without permission. The Landlord acknowledged the Tenant never moved out of the rental unit.

### ***10 Day Notice***

The 10 Day Notice was issued for \$560.00 in rent owing September 01, 2022.

The parties agreed the 10 Day Notice was served on the Tenant in person September 04, 2022.

The issue between the parties is the rent amount owing for September 01, 2022.

The Landlord submits that rent was \$1,500.00 starting September 01, 2022, pursuant to the second tenancy agreement signed by the parties.

The Tenant submits that rent remained at \$940.00 throughout the tenancy. The Tenant testified that they signed the second tenancy agreement but did so under duress and were forced to sign it. The only evidence relied on by the Tenant to support their testimony about duress is their own written statement. The Tenant testified that the Landlord was aggressive, abrupt and intimidating towards the Tenant and C.R. when discussing signing the second tenancy agreement. The Tenant testified that the Landlord told them they would be evicted if they did not sign the second tenancy agreement. The Tenant testified that their sister was only visiting and not planning to stay in the rental unit long term.

The Landlord denied that they were aggressive, abrupt or intimidating towards the Tenant and C.R. when discussing the second tenancy agreement. The Landlord testified that they did not do anything to force the Tenant to sign the second tenancy agreement. The Landlord testified that the Tenant acknowledged their sister was intending to live in the rental unit.

In reply, the Tenant denied acknowledging their sister was moving into the rental unit.

The parties agreed the Landlord never issued the Tenant a notice of rent increase on the RTB form.

The Landlord confirmed the 10 Day Notice was issued for the difference between the \$1,500.00 owing and the \$940.00 paid by the Tenant for September. The Landlord testified that \$2,240.00 in rent is currently outstanding.

The Tenant acknowledged they have only paid \$940.00 in rent per month.

The Tenant provided written statements in which they say their sister, C.R., signed the “rules” part of the second tenancy agreement. From the photo of the second agreement, I understand this to be page two of the addendum.

The Landlord sought an Order of Possession effective January 01, 2023.

### Analysis

#### ***One Month Notice***

The One Month Notice is cancelled because the Tenant never moved out of the rental unit and therefore did not assign or sublet the rental unit (see RTB Policy Guideline 19).

#### ***10 Day Notice***

Section 26(1) of the *Act* states:

26 (1) 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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) 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.

- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution...

Section 55(1) of the *Act* states:

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...and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.
- (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.

I find the parties entered into a new tenancy agreement when they signed the second tenancy agreement. The second tenancy agreement was different and distinct from the first in that it named an additional tenant, C.R., who signed the addendum of the agreement. When the parties entered into a new and different tenancy agreement, it was open to them to come to an agreement about any rent amount. I find the parties did agree to a rent amount of \$1,500.00 as stated on page two of the second tenancy agreement. This change in rent was not a rent increase governed by Part 3 of the *Act* because the parties entered into a new and different tenancy agreement from the original tenancy agreement. I acknowledge RTB Policy Guideline 30 addresses

increasing rent between tenancies; however, it relates to fixed term tenancies that remain the same. Neither of the tenancies here are fixed term tenancies and the tenancy agreement did not stay the same, the tenancy agreement changed to include C.R. as a tenant.

I do not accept that the Tenant signed the second tenancy agreement under duress or was forced to sign the second tenancy agreement. Duress and being forced to do something are very high bars, I would expect to see some compelling evidence that these things occurred. Here, the Tenant has only provided testimony and their own written statement about duress and being forced to sign the second tenancy agreement. The Landlord denied forcing the Tenant to sign the second tenancy agreement or that the Tenant did so under duress. In the absence of further evidence, I am not satisfied the Tenant signed the second tenancy agreement under duress or was forced to sign it. Further, it seems to me that the Tenant did not understand their rights and the rights of the Landlord regarding evictions, tenancy agreements and rent increases. Not knowing one's rights or the rights of others when signing legal documents does not amount to duress or being forced to sign, parties are expected to know their rights and rights of others and to learn these prior to signing legal documents if necessary.

I find the second tenancy agreement valid and enforceable. I find the Tenant and C.R. were required to pay \$1,500.00 in rent per month as of September 01, 2022.

I am satisfied the Tenant only paid \$940.00 in rent as of September 01, 2022, because the Tenant acknowledged this. The Tenant did not have authority under the *Act* to withhold rent, the Tenant simply believed rent should remain at \$940.00 per month.

Given the Tenant failed to pay \$1,500.00 in rent for September, the Landlord was entitled to issue the 10 Day Notice. There is no issue that the Landlord served the 10 Day Notice on the Tenant September 04, 2022.

I have reviewed the 10 Day Notice and find it complies with section 52 of the *Act* in form and content.

The Tenant had five days to pay the outstanding rent or dispute the 10 Day Notice.

There is no issue that the Tenant did not pay the outstanding rent because the Tenant acknowledged paying \$940.00 in rent each month.

The Tenant disputed the 10 Day Notice in time. However, the Tenant disputed the 10 Day Notice on the basis that rent was \$940.00 per month. I have found rent was \$1,500.00 per month as of September 01, 2022; and therefore, the Tenant's dispute of the 10 Day Notice is dismissed without leave to re-apply.

Pursuant to section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession based on the 10 Day Notice and is issued an Order effective at 1:00 p.m. on January 01, 2023.

Pursuant to section 55(1.1) of the *Act*, the Landlord is entitled to recover \$2,240.00 in rent being the difference between what the Tenant is required to pay and has been paying for September, October, November and December of 2022.

### Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on January 01, 2023. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to \$2,240.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: December 01, 2022

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Residential Tenancy Branch