



# 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

The hearing was reconvened as a result of the Landlords' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to sections 46 and 55 of the Act;
- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- authorization to keep the Tenant's security and/or pet damage deposit(s) pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

This hearing was reconvened ("Reconvened Hearing") from a non-participatory, *ex parte*, "direct request" proceeding ("Original Hearing"). In an interim decision dated June 20, 2022 ("First Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, the Reconvened Hearing was scheduled for hearing on October 21, 2022, to consider the Landlord's application. The Notice of Dispute Resolution Proceeding for the Reconvened Hearing ("Reconvened NDRP") was enclosed with the Interim Decision and emailed to the Landlord. The Landlord was instructed by the Residential Tenancy Branch ("RTB") to serve the Reconvened NDRP, the First Interim Decision and other required documents on the Tenant within three days of receiving the Interim Decision, in accordance with section 89 of the Act..

There was insufficient time to take the Tenant's testimony and allow rebuttals at the Reconvened Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") I adjourned the Reconvened Hearing and issued a decision dated October 8, 2022 ("Second Interim Decision"). The Second Interim Decision ordered the Landlord to serve the Tenant with, and submit to the RTB, an updated ledger ("Updated Ledger") disclosing the calculation of the rental arrears and the Tenant was ordered to

serve the Landlord, and submit to the RTB, with copies of all payments of rent. Otherwise, the parties were not permitted to serve any additional evidence on each other. The Second Interim Decision, and Notices of Dispute Resolution Proceeding for adjourned reconvened hearing (Adjourned Reconvened Hearing), scheduled for December 12, 2022 at 11:00 am, were served on the parties by the RTB.

Two of the Landlord's agents ("CR" and "JE") and the Tenant attended the Reconvened Hearing and the Adjourned Reconvened Hearing. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses at the Reconvened Hearing and the Adjourned Reconvened Hearing.

At the Reconvened Hearing, CR stated the original Notice of Dispute Resolution Proceeding and evidence ("Original NDRP Package") was served on the Tenant by registered mail on June 21, 2022. CR provided the Canada Post tracking number for service of the Original NDRP Package to corroborate his testimony on service on the Tenant. I find the Original NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

At the Reconvened Hearing, CR stated the Landlord served the Tenant with an amendment ("Amendment") dated October 4, 2022 to the Application on the Tenant's door. Although the Amendment was not served by a method permitted by section 89 of the Act, the Tenant acknowledged receipt of the Amendment. As such, I find the Amendment was sufficiently served on the Tenant pursuant in accordance with the provisions of section 71(2)(b) of the Act.

At the Reconvened Hearing, the Tenant stated he did not serve any evidence on the Landlord for this proceeding.

At the Adjourned Reconvened Hearing, CR stated the Landlord served the Updated Ledger on the Tenant. The Tenant acknowledged receipt of the ledger. I find the Tenant was served in compliance with the Order set out in my Interim Decision.

Notwithstanding the Order set out in the Interim Decision, the Tenant did not serve, or submit to the RTB, any evidence of the payments of rent he made for this Adjourned Reconvened Hearing.

Issues to be Decided

Are the Landlords entitled to:

- an Order of Possession for non-payment of rent?
- a monetary order for unpaid rent and/or utilities?
- recover the filing fee for the Application from the Tenant?

Preliminary Matter – Addition of Respondent to Application

At the outset of the Reconvened Hearing, I noted the tenancy agreement stated it was between JE and the Tenant while the 10 Day Notice was given by a corporate entity (“GLR”). JE stated he was an employee of GLR and requested that I amend the Application to add him as a respondent. The Tenant did not object to the proposed amendment. Rule 7.13 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

**7.13 Determining that another person be added as a party**

At the request of a party under Rule 7.12, the arbitrator will decide whether a person will be added as a party.

In addition, the arbitrator may unilaterally determine that another person should be added as a party.

The newly added party will be added to the proceedings without the need for further revision of the Application for Dispute Resolution.

All Rules of Procedure apply to the newly added party, with the exception of Rules establishing timeframes for the exchange of evidence.

As soon as possible after a party is added to a proceeding, the original applicant(s) and respondent(s) must serve their evidence on the newly added party.

The newly added party must, as soon as possible, serve their evidence on the original applicant(s) and respondent(s) and submit it to the Residential Tenancy Branch directly or through a Service BC Office, and in any event not less than seven days before the reconvened hearing.

At the request of JE, and in the absence of an objection from the Tenant, I order the Application be amended to add JE as a respondent to the Application pursuant to Rule 7.13 of the RoP. As JE stated he has no evidence to serve on the Tenant or the Landlord, I make no order for him to serve any evidence on the Tenant or GLR. As JE stated he already reviewed the evidence served on GLR by the Tenant, I make no order for the Tenant to serve his evidence on JE.

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

The Landlord submitted into evidence a copy of the tenancy agreement and addendum dated August 13, 2020 between the Landlord and Tenant. The parties agreed the tenancy commenced September 1, 2020, with a fixed term ending March 31, 2021, with rent of \$1,350.00 payable on the 1<sup>st</sup> day of each month. The Tenant was required to pay a security deposit of \$675.00 by August 13, 2020. CR submitted into evidence a copy of a Notice of Rent Increase that increased the rent to \$1,370.25 commencing on January 1, 2022. The addendum to the tenancy agreement states the Tenant is required to pay a fee of \$50.00 for NSF and late payments.

The Tenant submitted into evidence a copy of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated January 6, 2022 ("10 Day Notice"). CR stated the 10 Day Notice was served on the Tenant's door on January 7, 2022. CR submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB-34 to corroborate his testimony on service of the 10 Day Notice on the Tenant. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act. The 10 Day Notice stated the Tenant had rental arrears of \$2,720.25 as of January 1, 2022.

The Landlord submitted the Update Ledger into evidence which indicated the Tenant owed \$1,350.00 for rental arrears as of January 1, 2022. The Updated Ledger indicated the Tenant had rental arrears of \$2,340.50 as of November 1, 2022, calculated as follows:

Date	Amount Due	Late Fee	Amount Paid	Balance
October 1, 2021	\$1,350.00		\$0.00	\$1,350.00
November 1, 2021	\$1,350.00		\$1,350.00	\$1,350.00
December 1, 2021	\$1,350.00		\$1,350.00	\$1,350.00
January 1, 2022	\$1,370.25		\$1,500.00	\$1,220.25
February 1, 2022	\$1,370.25		\$1,370.25	\$1,220.25
February 1, 2022			\$300.00	\$920.25
March 1, 2022	\$1,370.25		\$1,370.25	\$920.25
April 1, 2022	\$1,370.25	\$25.00	\$1,370.00	\$945.25
May 1, 2022	\$1,370.25		\$1,370.25	\$945.25
June 1, 2022	\$1,370.25		\$1,370.25	\$945.25
July 1, 2022	\$1,370.25	\$25.00	\$1,370.25	\$970.25
August 1, 2022	\$1,370.25		\$0.00	\$2,340.50
September 1, 2022	\$1,370.25		\$1,370.25	\$2,340.50
October 1, 2022	\$1,370.25		\$1,370.25	\$2,640.50
October 1, 2022			\$300.00	\$2,340.50
November 1, 2022	\$1,370.25	\$1,370.25	\$1,370.25	\$2,340.50
<b>Balances:</b>				\$2,350.50

Section 7 of the *Residential Tenancy Regulations* states:

- 7(1) A landlord may charge any of the following non-refundable fees:
- (a) direct cost of replacing keys or other access devices;
  - (b) direct cost of additional keys or other access devices requested by the tenant;
  - (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
  - (d) *subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*
  - (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
  - (f) a move-in or move-out fee charged by a strata corporation to the landlord;

- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.
- (2) *A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.*

[emphasis in italics added]

Section 7(1)(d) permits a landlord to charge a maximum of \$25.00 for a late fee only when the tenancy agreement provides the Landlord may charge for a late fee. In this case, the tenancy agreement stated the Landlord could charge \$50.00 for NSF or for late payment of rent. However, the Landlord only charged the Tenant a late fee of \$25.00 and, therefore the Landlord charge of \$25.00 for late payment fees was in compliance with section 7 of the Regulations.

The Tenant acknowledged he did not make an application for dispute resolution to dispute the 10 Day Notice. The Tenant stated that, as he was continuing to pay rent to the Landlord, he had an expectation that the tenancy would continue.

I noted that the payments made by the Tenant were all made by e-transfer. When I asked, CR admitted the Landlord had not given the Tenant a written notice stating it was accepting the Tenant's payment of \$1,370.25 on November 1, 2022 for "use and occupancy only".

### Analysis

#### **1. Landlord's Claim for Order of Possession**

Sections 26(1) and 46(1) through 46(5) of the Act state:

- 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.
- 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 *[form and content of notice to end tenancy]*.
- (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.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

The 10 Day Notice was served on the Tenant's door on January 7, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on January 12, 2022. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or until January 17, 2022, within which to dispute the 10 Day Notice. The Tenant acknowledged he did not dispute the 10 Day Notice.

The 10 Day Notice stated the Tenant had rental arrears of \$2,720.25 as of January 1, 2022. However, the ledger states the Tenant had rental arrears of \$1,220.25. As set out above, section 46(2) of the Act requires a notice given under section 46 must comply with the requirements of section 52 of the Act that states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The amount of rental arrears claimed by the Landlord in the 10 Day Notice was more than two times the actual amount of rental arrears owed by the Tenant. As such, I find the 10 Day Notice did not correctly state the amount of the rental arrears and, as such, it did not properly state the grounds for ending the tenancy. If the 10 Day Notice had stated the correct amount of rental arrears, the Tenant may have paid the rental arrears, or made an application for dispute resolution, to dispute the 10 Day Notice, within the 5-day dispute period. Based on the foregoing, I find the 10 Day Notice was not effective when it was served on the Tenant. I order the 10 Day Notice cancelled and of no force or effect. As such, the Landlord is not entitled to an Order of Possession or a monetary order for the rental arrears owed by the Tenant. The tenancy will continue until lawfully ended in accordance with the provisions of the Act. As such, the Application is dismissed in its entirety without leave to reapply.

CR stated the Landlord had not given the Tenant a written notice to advise him that the payment made on November 1, 2022 was being accepted from the Tenant for use and occupancy only. The Tenant stated he was making payments to the Landlord in the expectation that the tenancy would continue. As such, even if I had found the 10 Day Notice was effective when served on the Tenant, I would have nevertheless found the Landlord reinstated the tenancy when it accepted the Tenant's payment on November 1, 2022.

I note that section 26 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 26 makes it clear that payment of rent in full and on time must be made by the Tenant to the landlord. Failure of a tenant to pay the rent in full, on time, unless the tenant has the right to deduct all or a portion of the rent, may have dire consequences to the tenant. In this case, the Tenant should ensure that he immediately complies with his obligations to pay the rent in full.

Conclusion:

The 10 Day Notice is cancelled. The tenancy will continue until lawfully ended in accordance with the provisions of the Act.

The Application is dismissed in its entirety without leave to reapply.

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: December 15, 2022

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Residential Tenancy Branch