



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File #310084583: CNR

File #910086623: OPR-DR, MNR-DR, FFL

### Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) to cancel a 10-Day Notice to End Tenancy signed on September 6, 2022 (the “10-Day Notice”).

The Landlord files its own application in which it seeks the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of their filing fee pursuant to s. 72.

The Landlord filed their application as a direct request but it was scheduled for a participatory hearing in light of the Tenant’s application.

C.B. appeared as the Tenant. G.W. and J.J. appeared as the agents of the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I enquired whether the Tenant had served her application and evidence on the Landlord. The Tenant acknowledged not having done so. The Landlord’s agents indicate they had notice of the application though did not receive

notice from the Tenant. The Landlord's agents further indicate that they were prepared to proceed on the Tenant's application despite not having been served.

Based solely on the consent by the Landlord's agents, I am prepared to proceed with the Tenant's application despite it not having been served. With respect to the Tenant's evidence provided to the Residential Tenancy Branch, as it has not been served, I find that it would be procedurally unfair on the Landlord to rely upon it. Accordingly, it shall not be included into evidence nor considered by me in these reasons.

The Landlord's agent advised having served the Tenant with the Landlord's application and evidence, indicating it had been sent via registered mail on October 20, 2022. The Landlord provides tracking information as proof of service. The Tenant acknowledges receipt of the Landlord's application materials by way without objection. Based on its acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* the Tenant was sufficiently served with the Landlord's application and evidence.

#### Preliminary Issue – Style of Cause

The Tenant's application lists G.W. as the Landlord. However, the tenancy agreement and the Landlord's application names the Landlord as a corporate entity.

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. The Landlord's agent confirmed that the correct name for the Landlord is listed in the tenancy agreement. I proposed the style of cause be amended to reflect the Landlord as stated in the tenancy agreement. The Tenant raised no objections with respect to the amendment.

Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the Landlord as listed in the tenancy agreement.

#### Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) Is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is the Landlord entitled to the return of its filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on February 1, 2022.
- The Tenant is in receipt of a rental subsidy and her portion of the rent payments is \$781.00, which is due on the first day of each month.

The Landlord provides a copy of the tenancy agreement.

The Landlord's agent advised having served the 10-Day Notice on the Tenant by way of email, posting it to the Tenant's door, and registered mail, all of which were sent or posted on September 6, 2022. The tenancy agreement lists the parties' emails, specifying they are provided as an address for service. The Tenant acknowledges receipt of the 10-Day Notice, though cannot recall how or when she received it.

The Landlord provides me a copy of the 10-Day Notice, which lists that the Tenant owed \$1,562.00 as of September 1, 2022. The Landlord's agent advised that this was due to the Tenant's failure to pay her portion of the \$781.00 rent payment on August 1, 2022 and September 1, 2022. The Landlord's agent advised that the Tenant paid \$1,562.00 to the Landlord on October 28, 2022 and made further payment of \$781.00 on November 18, 2022.

The Landlord's agent advised that the Landlord seeks unpaid rent for November 1, 2022 and December 1, 2022, which they say has not been paid.

The Tenant confirms that she paid rent as alleged by the Landlord. She further confirms not having paid rent for November and December 2022, though argued she was uncertain on what was owed. She argued that she has every intention to pay the arrears but that she has faced challenges following a job loss and a workplace injury.

The Landlord's agent advised that the Landlord seeks an order for unpaid rent without taking the rental subsidy into account. I was advised that the Tenant had an obligation as part of the subsidy program to reapply in July but had failed to do so. As the Tenant failed to reapply, it was argued that rent owed reverted back to the full rent listed in the

tenancy agreement as of October 1, 2022. The Landlord's agent says that they would not be seeking the full rent for October 2022 as they have already accepted the \$781.00 payment as a full month's rent.

The tenancy agreement sets out the Tenant's rent obligation under clauses 7 and 49, which I reproduce below:

7. **RENT AND FEES.** Rent in full must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date or dates.

See section 49 about the subsidy program

Rent	\$ 1830.00	per <input checked="" type="checkbox"/> month <input type="checkbox"/> week <input type="checkbox"/> other
Parking Fee(s)	\$ not available	(Describe)
Other Fee(s)	\$	(Describe)
<b>TOTAL RENT AND FEES</b>	<b>\$ 1830.00</b>	

Subject to clause 19, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1, 2, or 3 above, the rent will increase by \$\_\_\_\_\_ per month. The landlord's acceptance of any additional tenant or occupant does not otherwise change this Agreement or create a new tenancy.

49. **OTHER.** The tenant receives a rent subsidy from The [redacted] Society and currently contributes \$781 per month towards the rent, which in no way establishes a fixed monthly rent rate. A rent subsidy is determined on an annual basis once the tenant has applied and satisfied the terms & conditions to the rent subsidy program as determined by The [redacted] Society.

Landlord's Initials ☐ Tenant's Initials [redacted]

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy. The Landlord did not provide a copy of the terms and conditions for the rent subsidy program. However, I am directed to a letter dated February 2, 2022 sent by the Landlord to the Tenant. I reproduce the following portion of the letter:

This letter confirms that the rent subsidy is approved by The [redacted] Society from the start of tenancy to September 30, 2022. The subsidy is based on annual application with the term each year starting on October 1. The "tenant contribution towards rent" is the amount that you would pay each month.

The February 2, 2022 letter goes on to say that if the Tenant wishes to proceed with the tenancy, she could meet with the Landlord's agent the next week to sign the tenancy agreement.

The parties confirmed that the Tenant continues to reside within the rental unit.

### Analysis

The Tenant seeks an order cancelling the 10-Day Notice. The Landlord seeks an order of possession and an order for unpaid rent.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

I accept the Landlord's evidence that it served the Notice of Dispute Resolution on September 6, 2022 by the three methods discussed. I note that the tenancy agreement lists the email addresses of the parties as an address for service, such that it is an approved form of service under ss. 88 and 89 *Act* as per s. 43 of the Regulations. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. The Tenant acknowledges receipt of the 10-Day Notice, though cannot recall how she received it or when she received it.

Upon review of the information on file for the Tenant's application and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application to dispute the 10-Day Notice on September 8, 2022. Regardless of whether the Tenant received the 10-Day Notice on September 6, 7, or 8<sup>th</sup>, the application was filed within the 5-day window imposed by s. 46(4) of the *Act* such that the conclusive presumption does not apply.

In the present instance, I accept the undisputed evidence of the parties that the Tenant did not pay rent on August 1, 2022 or September 1, 2022 such that arrear of \$1,562.00 (\$781.00 x 2) had accrued. I further accept that the undisputed evidence of the parties that the made payment of \$1,562.00 on October 28, 2022 such that she failed to pay

the arrears within 5-days of receiving the 10-Day Notice. In other words, s. 46(4)(a) of the *Act* does not apply such that the notice was rendered ineffective. Accordingly, I find that the 10-Day Notice was properly issued by the Landlord.

Accordingly, I dismiss the Tenant's application cancelling the 10-Day Notice and grant the Landlord an order of possession pursuant to s. 55 of the *Act*.

With respect to the Landlord's claim for unpaid rent, under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlord seeks unpaid rent for November 2022 and December 2022. I note that this is not specifically pled in their application, though permit the Landlord to seek those amounts as this claim can be reasonably anticipated such that Rule 4.2 of the Rules of Procedure applies.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).

3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

None of the exceptions apply under the present circumstances.

In this instance, it is undisputed that the Tenant did not pay rent for November or December 2022 and made three payments of \$781.00 (two on October 28, 2022 and one on November 18, 2022). The Landlord asserts that the rental subsidy ended on October 1, 2022 but that they accepted the \$781.00 payment for October 2022 such that they seek \$1,830.00 for November and December 2022.

The issue I have with the Landlord's claim for market rent is that it does not accord with the plain wording of the tenancy agreement. I am told the Tenant ought to have reapplied for the rental subsidy in July 2022 for it to apply for the following year beginning on October 1, 2022. However, clause 49 of the tenancy agreement does not state the Tenant had to reapply in July 2022 or that the subsidy expired on October 1 of each calendar year. Rather, the "rent subsidy is determined on an annual basis once the tenant has applied and satisfied the terms & conditions to the rent subsidy program". I have not been provided with a copy of the terms and conditions nor was I advised whether the Tenant had signed off on the terms and conditions. I note the tenancy began in February 2022 such that one would expect the annual renewal to occur one year later, being effective for February 1, 2023. Further, the Landlord accepted \$781.00 for October's rent, this despite the assertion that the subsidy expired on October 1, 2022 due to the Tenant's failure to reapply in July.

The wording of clause 7 and 49, when read together, clearly set out the expectation that the Tenant's portion of the rent would be \$781.00 pending an annual review. The tenancy agreement further sets the security deposit to \$390.00, which is approximately one-half of \$781.00, thereby conforming with the expectation that rent under the tenancy agreement was \$781.00.

The tenancy agreement is silent on when the annual review is to take place. I have not been provided with a copy of the terms and conditions, nor is it clear to me that the Tenant signed off on the terms and conditions. For the renewal to take effect on October 1, 2022, one would expect that to be clear within the tenancy agreement or the

terms and conditions be made an addendum to the tenancy agreement. That does not appear to be the case here.

I was directed to a letter dated February 2, 2022 in the Landlord's evidence. However, that letter is not the tenancy agreement. It does not form terms within the contract. Nor is that letter the terms and conditions for the subsidy program. The letter may evidence aspects of the Landlord's subsidy program, but it does not assist when the tenancy agreement, on its plain reading, establishes an annual review without reference to the October 1 renewal period. I find that the Landlord has failed to establish that the market rate ought to apply.

I find that the Tenant failed to pay rent as per the tenancy agreement in November 2022 and December 2022 such that the Landlord is entitled to compensation for unpaid rent. As the Tenant continues to reside within the rental unit, the Landlord could not have mitigated their damages under the circumstances. Given the issues with respect to what the amount of rent was owed, I find that subsidized rate applies due to the plain wording of the tenancy agreement such that the Landlord has established a monetary claim for unpaid rent totalling \$1,562.00.

### Conclusion

The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

Pursuant to s. 67 of the *Act*, the Landlord has demonstrated a monetary claim for unpaid rent totalling \$1,562.00 and shall receive an order for that amount.

The Landlord was largely successful in its application. I find that it is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

It is the Landlord's obligation to serve the order of possession and the monetary order on the Tenant.

If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: December 08, 2022

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Residential Tenancy Branch