



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

A matter regarding TUNGSTEN ASSETS MANAGEMENT  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNR, CNC, FFT (unit A)**  
                                 **CNR, CNC, FFT (unit B)**

### **Introduction**

This hearing dealt with the Tenant's Application for unit A under the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenant's joiner Application for unit B under the Act for:

1. Cancellation of the Landlord's 10 Day Notice under sections 46 and 55 of the Act;
2. Cancellation of the Landlord's One Month Notice under sections 47 and 55 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

Agent K.L., witnesses S.M. and V.W. attended the hearing for the Tenant.

Rental manager C.F. attended the hearing for the Landlord.

## **Service of Notice of Dispute Resolution Proceeding and evidence (Proceeding Package)**

The Tenant served both Proceeding Packages (for unit A and unit B) to the Landlord by registered mail on October 26, 2024. I find that the Landlord was deemed served on October 31, 2024 in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post customer receipts containing the tracking numbers to confirm this service. The Landlord confirmed receipt.

## **Service of Evidence**

The Landlord testified that they served their evidence to the Tenant by registered mail on October 21, 2024. The Landlord provided a copy of the Canada Post customer receipt containing the tracking number to confirm this service. The Tenant confirmed receipt. Based on the submissions before me, I find that the Landlord's evidence was deemed served to the Tenant on October 26, 2024 in accordance with sections 88(c) and 90(a) of the Act.

## **Issues to be Decided**

Unit A:

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice, if not, is the Landlord entitled to an Order of Possession?
2. Is the Tenant entitled to cancellation of the Landlord's One Month Notice, if not, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Unit B:

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice, if not, is the Landlord entitled to an Order of Possession?
2. Is the Tenant entitled to cancellation of the Landlord's One Month Notice, if not, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

## **Background and Evidence**

I reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that the tenancy for unit A began as a fixed term tenancy on December 1, 2021. The fixed term ended on November 30, 2022, then the tenancy continued on a month-to-month basis. The Landlord said monthly rent is \$1,900.00 payable on the first day of each month, while the Tenant said the monthly rent is \$1,947.50. A security deposit of \$850.00 was collected at the start of the tenancy plus a holding of \$500.00 for bylaw fines. Both are still held by the Landlord.

The parties confirmed that the tenancy for unit B began as a fixed term tenancy on November 1, 2022. The fixed term ended on October 31, 2023, then the tenancy continued on a month-to-month basis. The Landlord said monthly rent is \$2,500.00 payable on the first day of each month. A security deposit of \$1,250.00 was collected at the start of the tenancy plus a holding of \$500.00 for bylaw fines. Both are still held by the Landlord.

### **Unit A:**

The Landlord served the Tenant with the 10 Day Notice by Canada Post registered mail on October 21, 2024. The Landlord's 10 Day Notice was dated October 9, 2024. The Landlord's rental manager referred me to the Canada Post registered mail tracking number as proof of service. The Tenant confirmed receipt. The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$600.00 in outstanding utilities on March 1, 2024. The effective date of the 10 Day Notice was October 31, 2024.

The Landlord's One Month Notice was dated October 9, 2024. The Landlord's rental manager referred me to the Canada Post registered mail tracking number as proof of service. The Tenant confirmed receipt.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant: is repeatedly late paying rent; has breached a material term of the tenancy agreement that has not been corrected within a reasonable time after the Landlord gives written notice to do so; and, has assigned or sublet the rental unit without the landlord's written consent.

The Landlord provided further details of the causes to end this tenancy as:

*The tenant violated the strata bylaws in July 2021, December 2023, and February 2024, resulting in a total fine of \$600, which remains unpaid. The landlord also suspects that the tenant has sublet the unit without consent. Additional evidence will be submitted to the RTB online dispute resolution system.*

*Failure to follow the rent payment instructions sent on August 9th, 2024, directing payments to [property management company]. Despite second and third reminders in September and October 2024, no rent has been received.*

#### **Unit B:**

The Landlord served the Tenant with the 10 Day Notice by Canada Post registered mail on October 21, 2024. The Landlord's 10 Day Notice was dated October 9, 2024. The Landlord's rental manager referred me to the Canada Post registered mail tracking number as proof of service. The Tenant confirmed receipt. The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,300.00 in outstanding utilities on October 1, 2024. The effective date of the 10 Day Notice was October 31, 2024.

The Landlord served the Tenant with the One Month Notice by Canada Post registered mail on October 21, 2024. The Landlord's One Month Notice was dated October 9, 2024. The Landlord's rental manager referred me to the Canada Post registered mail tracking number as proof of service. The Tenant confirmed receipt.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant: is repeatedly late paying rent; has breached a material term of the tenancy agreement that has not been corrected within a reasonable time after the Landlord gives written notice to do so; and, has assigned or sublet the rental unit without the landlord's written consent.

The Landlord provided further details of the causes to end this tenancy as:

*The tenant violated the strata bylaws in March, April and September 2021, September 2023, and April June and September 2024, resulting in a total fine of \$2,300, which remains unpaid.*

*The landlord also suspects that the tenant has sublet the unit without consent. Additional evidence will be submitted to the RTB online dispute resolution system.*

*Failure to follow the rent payment instructions sent on August 9th, 2024, directing payments to [property management company]. Despite second and third reminders in September and October 2024, no rent has been received.*

For unit A, the rental manager testified that the Tenant has unpaid strata bylaw fines. The Landlord said before they sent the notice, there was \$600.00 in outstanding strata bylaw fines. The rental manager stated that the Tenant paid the \$600.00 strata bylaw fines after they served the 10 Day Notice, but now there is a \$200.00 strata bylaw fine for smoking on October 15, 2024.

For unit B, the Landlord uploaded a bylaw violation letter from their strata council dated April 5, 2024 for unit B that asserts the resident has done two unlawful moves, and move-in fees were not received by the strata council. The strata council seeks an updated Form K, or they will assume the owner is operating an illegal short-term rental in the suite. The strata council also sent the Landlord an owner arrears detail sheet dated October 8, 2024 that totaled \$2,300.00. Four April charge descriptions deal with:

- Resident of unit B moved in without notice on at least two separate occasions.
- Resident of unit B changing tenancies without notice on at least two separate occasions.
- Move-In fee (move in fee for each of the unlawful moves)
- Move-In fee (move in fee for each of the unlawful moves)

The rental manager said they forwarded the April 5, 2024 letter from the strata council, and the October 8, 2024 arrears accounting to the Tenant on October 17, 2024. On October 15, 2024, the rental manager did an inspection of rental unit A and B, and they spoke to the Tenant about the outstanding strata bylaw fines. The rental manager said the Tenant told them they are working on a dispute with the strata, but they do not see any efforts by the Tenant about paying the outstanding bylaw fines. The rental manager said they are also asking the Tenant to sign a form K, but the Tenant has not signed the form.

The rental manager said that the strata bylaw fine is against the Tenant not the Landlord, but they could not explain how a strata bylaw fine can be considered unpaid rent or utilities. The rental manager said there is no term in the tenancy agreement that

the Tenant is responsible for strata bylaw fines. In the Residential Tenancy Agreement Addendum (addendum), clause #2 states that the Tenant will be responsible for any property fines and other lease related fines and damages incurred.

The rental manager sent an email to the Tenant with new rent payment instructions for units A and B. The Landlord uploaded copies of the email notifications. The August 9, 2024 email states that starting on September 1, 2024, all rental payments are to be made payable to RCR either by etransfer or cheque, with clear instructions for each method.

In September 2024, the Tenant paid their rent to the old property management company. RCR double checked with the Landlord, and they were told that the old property management company etransferred the Tenant's rent to the Landlord. The rental manager did not provide the date of this etransfer or the amount.

On September 8, 2024, the rental manager sent a second email to the Tenant including instructions to pay rent to RCR. This email again included the same clear instructions of how to etransfer or pay rent by cheque to RCR. On October 1, 2024, the Tenant again sent their rent to the old property management company. The old property management company sent the Tenant's rent to the Landlord. The rental manager is not sure of the amount sent to the Landlord, but they assume it was the rent amount.

On October 9, 2024, the rental manager send a third email to the Tenant instructing them to remit their rent to RCR "to avoid any late fees or further action." On November 1, 2024, neither RCR nor the Landlord received rent from the Tenant.

The rental manager says that the Tenant is doing short term rentals in their rental unit. The Landlord uploaded two letters, one dated January 10, 2023, the second dated January 27, 2023, addressed from the strata council about short term rentals occurring in unit A.

The rental manager said that the bylaw violations occurred in June 2024 and earlier, but they were not managing the property at that time. They have not sent the Tenant a breach letter about the bylaw violations.

Clause 3 of the parties' tenancy agreement addendum for both unit A and unit B states:

Unit A:

3. *Landlord is aware that the Property is being offered by Tenant to third party clients and that Tenant is responsible for all management and other services related to the rental.*

Unit B:

3. *Landlord is aware that the Property is being offered by Tenant to sublease to third party clients for profit and the Tenant is responsible for all management and other services related to the rental.*

The Landlord uploaded a website page showing that the Tenant is operating a service providing rentals and management of properties. At present, the Tenant is not subleasing the rental units, but they have the potential to be doing sublets. The Landlord agrees that the Tenant can do subleasing, but the Tenant is not permitted to do short-term rentals.

The Tenant testified that both the former agent for the Landlord, and the current agent for the Landlord say they are representing the Landlord. The Landlord has told the Tenant that RCR is the current agent for the Landlord. The Tenant further stated that the Landlord breached the contract with the former agent for the Landlord.

The Tenant submits that the 10 Day Notices deal with unpaid strata fines, not unpaid rent or utilities, so are not valid. The Tenant testified that they have paid the strata fines, and uploaded a copy of the cheque paying the \$600.00 fine, and the receipt showing it was received on 'October 17'.

The Tenant said they were not aware that the bylaw fines were higher, and no other violations letters were sent to the Tenant by the new rental manager.

The Tenant uploaded etransfer statements showing that rent was paid up to October 2024 to the former property manager for rental unit A. The Tenant uploaded deposited cheques for rent paid up to October 2024 to the former property manager for rental unit B.

The Tenant brought in the former property manager, S.M., and they confirmed that the Tenant is paying the rent for both rental units on time. S.M. testified that they were the legal representative for the Landlord until the beginning of October 2024.

S.M. stated that they received October's rent from the Tenant, and they sent it to the Landlord by e-transfer. S.M. confirmed that October's rent was automatically deposited to the Landlord's account.

S.M. stated they also received November's rent from the Tenant, but they are not e-transferring the rent amount to the Landlord because they know the Landlord is accusing the Tenant for not paying rent. S.M. has a contract with the Landlord that they are the representative for the Landlord until the Tenant is no longer in the rental unit. They said that the Landlord owes them a 5% service fee, and once the Landlord fully pays the service fee, then they can cancel the contract.

The Tenant brought in witness V.W. to give evidence about the unlawful strata bylaw fines issued by the strata council. V.W. said they are a current tenant in the same residential property as the Tenant. They have also been issued unlawful strata bylaw fines by the strata council. Currently, V.W. has two cases that will be heard at the Civil Resolution Tribunal (CRT), but they said the wait times are long. The Tenant said they are fighting their strata bylaw fines as well.

The Landlord seeks an Order of Possession because of the unpaid rent for November 1, 2024 for both units. The Landlord said because of the outstanding balance of strata bylaw fines, the rental manager says the Landlord is entitled to an Order of Possession.

The Tenant says the 10 Day Notices are not valid because there are no unpaid utility bills. The Tenant submits that strata fines are not utilities.

The Tenant stated they paid the strata fine for unit A, but they are working through the process of disputing the strata fine for unit B. The Tenant said they have paid the rent every month on time, and this hearing does not have anything to do with November's rent being late. The Tenant said they have not breached a material term of their tenancy agreements.

The Tenant stated they paid two \$500.00 illegal deposits to the Landlord for strata bylaw fines, and they want this money back.

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

**Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?**

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I find the Landlord's 10 Day Notices for unit A and unit B were deemed served to the Tenant on October 26, 2024. The Tenant applied for dispute resolution for both units on October 23, 2024. I find that the Tenant has applied in time to dispute the two 10 Day Notices and the Landlord has the onus to prove that the reasons for both 10 Day Notices are valid.

The reasons in the 10 Day Notices why the Landlord was ending the tenancy was because the Tenant, in unit A, owed \$600.00 in outstanding utilities on March 1, 2024, and in unit B, owed \$2,300.00 in outstanding utilities on October 1, 2024.

Utilities in a residential tenancy include items such as electricity, water, heat, natural gas, garbage collection, or recycling services. The outstanding amounts the Landlord is seeking are unpaid strata bylaw fines. I find that strata bylaw fines are not utilities, therefore, cannot be the reason included on a 10 Day Notice.

I find the Landlord has not proven that the reasons in the 10 Day Notices are valid, and I cancel both 10 Day Notices. I find that the tenancy will continue until ended in accordance with the Act.

**Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?**

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

The Landlord submitted that the Tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38-Repeated Late Payment of Rent (PG#38) provides a statement on the policy intent of the legislation regarding repeatedly late rent payments. It states:

...

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.*

*However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.*

...

The Landlord contracted with a new property manager starting the beginning of September 2024. The new rental manager sent the Tenant an email in August informing them to pay rent to RCR and describing the methods that can be used to pay rent. The rental manager testified that the Tenant was late paying rent in September and October 2024. They stated they have not received rent in November, but I will not be considering this rent payment period as it falls after the One Month Notices were issued.

The Tenant paid rent to the former property manager in September and in October because they said they understood that the former property manager was the person they were to be dealing with. The former property manager sent the Landlord the rent payments in September and October by etransfer which were automatically deposited. The former property manager said the Landlord still owes them a fee, and their contract with this Tenant will end when the Landlord pays the fee.

I find that the Landlord has contracted with a new property management company, and the Tenant must pay their rent to this company as they are the responsible legal party representing the Landlord. The rental manager was unsure when the September and October rent payments were etransferred to the Landlord. The Tenant said they will be paying their rent to the new property manager starting on December 1, 2024.

To constitute being repeatedly late paying rent, a Landlord must prove on a balance of probabilities that the Tenant has been late paying rent at least three times, and the

three times do not have to be consecutive payment periods. I find the Landlord has not proven that the Tenant was late paying rent to the Landlord in September and October 2024.

The Landlord submitted that the Tenant has breached a material term of their tenancy agreements. Residential Tenancy Policy Guideline #8-Unconscionable and Material Terms (PG#8) deals with material terms of tenancy agreements. It states that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. I must assess the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. To end a tenancy agreement for breach of a material term the Landlord must inform the other party in writing that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and,
- if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

The rental manager testified that no short-term rentals are permitted on the residential property. Although both of the Landlord's tenancy agreement addendums for unit A and unit B state that the:

*Unit A: Landlord is aware that the Property is being offered by Tenant to third party clients and that Tenant is responsible for all management and other services related to the rental.*

*Unit B: Landlord is aware that the Property is being offered by Tenant to sublease to third party clients for profit and the Tenant is responsible for all management and other services related to the rental.*

I find that neither of these terms are specific about the timelines of the kind of subletting that is permitted in the rental units. The Landlord has not provided the Tenant with a letter indicating that the Tenant is breaching their tenancy agreement, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed, that the Landlord would be serving a notice to end the tenancy.

Based on the testimony and evidence of the parties, and on a balance of probabilities, I find that the Landlord has not proven that the Tenant has breached a material term of their tenancy agreement, and that the tenancy must end because of the breach.

The Landlord stated that the Tenant has assigned or sublet the rental unit without the Landlord's consent. I find that the tenancy agreement addendum provides that the Tenant can sublease their rental unit, and the Tenant has the Landlord's consent. The Landlord relies on strata bylaw fines that they say show that the Tenant has short term rentals in the rental unit. The Tenant's witness V.W. says that the strata council has issued many bylaw fines against them, and they are fighting them at the CRT. The Tenant is planning the same tactic against the strata council of the residential property.

Based on the testimony and evidence of the parties, and on a balance of probabilities, I find that the Landlord has not proven that the Tenant has assigned or sublet their rental unit without the Landlord's consent.

Section 19 of the Act states that a landlord must not require or accept a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, and if a landlord accepts a security deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment. I make no orders about this section but am alerting the parties that there is a way under the Act that the Tenant can recover the two \$500.00 bylaw fine fees they paid to the Landlord at the start of the tenancy.

I find that the Landlord has not proven cause to end the tenancies for unit A or unit B. I cancel the Landlord's One Month Notices, and the tenancies will continue in accordance with the Act.

### **Is the Tenant entitled to recover the application filing fees?**

As the Tenant is successful in both their claims, they are entitled to recovery of the application filing fees. The Tenant may, under section 72(2)(a) of the Act, deduct \$100.00 from one month's rent for each rental unit due to the Landlord.

For the benefit of the parties, they may wish to discuss with an Information Officer at the Residential Tenancy Branch the options available to them to recover the overpayment of a deposit. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 604-660-1020 (Lower Mainland)

250-387-1602 (Victoria)

1-800-665-8779

Website: [www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies](http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies)

## **Conclusion**

The Tenant's applications to cancel the 10 Day Notices are granted.

The Tenant's applications to cancel the One Month Notices are granted.

The Tenant may deduct \$100.00 from one month's rent for both unit A and unit B to recover their application filing fees.

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 29, 2024

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Residential Tenancy Branch