



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNR, OLC, LAT, FFT, OPR-DR, FFL

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant seeks

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70; and
- recovery of the filing fee for this application from the landlords pursuant to section 72.

The landlords seeks:

- an Order of Possession for unpaid rent pursuant to section 55; and
- recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord YN (the “landlord”) primarily spoke on behalf of both co-landlords.

As both parties were present service of documents was confirmed. The parties each testified that they were in receipt of the other's materials. Based on the undisputed testimonies I find that the tenant was served with the 10 Day Notice, 1 Month Notice,

landlord's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act* and the landlords were served with the tenant's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice and/or 10 Day Notice be cancelled? If not are the landlords entitled to an order of possession?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Should the tenant be authorized to change the locks to the rental unit?

Is either party entitled to recover the filing fee for this application from the other?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This tenancy began in November, 2016. The current monthly rent is \$800.00 payable by the first of each month. In addition the tenant is responsible for paying 20% of the utility bills for the rental building. A security deposit of \$400.00 was paid at the start of the tenancy and is still held by the landlords.

The parties gave evidence that they entered an agreement whereby the tenant was authorized to withhold the monthly rent for January, 2018. The landlord testified that the tenant's right to withhold that amount was contingent on the tenant vacating the rental unit by February 2, 2018. The landlord issued the 10 Day Notice which shows a rental arrear of \$1,600.00, the unpaid rent for January and February, 2018, and outstanding utility bills of \$154.86. The landlord testified that the tenant has failed to pay any amount of the rent or utilities indicated on the 10 Day Notice and has not paid any amount for the months of March and April as well.

The tenant testified that she did not pay any amount for the months of January and February, 2018. The tenant said that as the amount provided as unpaid on the 10 Day Notice was incorrect she felt she was not obligated to make any payment. The tenant disputed the landlord's evidence that she has not paid for any subsequent months and testified that she paid the rent and utilities in full for the months of March and April, 2018. The tenant said that she made the payments in cash handed to the landlords.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case, the landlord testified that there was a rent arrear of \$1,600.00 and unpaid utilities in the amount of \$154.86 at the time the 10 Day Notice was issued. The tenant acknowledges there is a rent arrear but disputes the total amount saying that she was not obligated to pay rent for January, 2018 and the actual rent arrear should be \$800.00.

The landlord gave evidence that while there were discussions that the tenant may withhold the January, 2018 rent, in order to withhold the rent the tenant was required to vacate the rental unit by February, 2018. The landlord submits that as the tenant failed to vacate the rental unit by the agreed upon date, the full amount of rent became due and owing. In any event the parties agree that the tenant was obligated to pay February rent in full and has failed to do so.

I accept the evidence of the parties that there is a rental arrear and that the tenant failed to pay the full rent due within the 5 days of service. While the tenant submits that the amount indicated on the 10 Day Notice is miscalculated, she acknowledged that there is a rent arrear.

As regarding the tenant's obligation to pay the January rent, I find the landlord's testimony to be more reasonable. The text message correspondence submitted into evidence reflects the landlord's testimony that the 1 month free rent was contingent on the tenant vacating the rental unit by a specified date. I accept the landlord's evidence that the tenant failed to vacate and thus the full amount of rent for the month of January became due and owing.

Accordingly, I find that the tenancy ended on the effective date of the 10 Day Notice, February 15, 2018. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As the tenancy is ending I find it unnecessary to make a finding regarding the portions of the tenant's application seeking authorization to change locks or an order that the

landlord comply with the Act. I dismiss the balance of the tenant's application without leave to reapply.

As the landlord's application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced to \$300.00.

### Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlords effective **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.

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: April 17, 2018

---

Residential Tenancy Branch