



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wing Lee Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR**

MNR-DR, OPR-DR

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (“Act”).

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55.

The landlord applied for:

- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55.

The landlord was represented at the hearing by property manager, TG (“landlord”). The tenant attended the hearing and was later joined by an advocate MG. As both parties were present, service of documents was explored.

Preliminary Issue – service of the Notice of Dispute Resolution Proceedings

The landlord acknowledged receipt of the tenant’s Notice of Dispute Resolution Proceedings but stated they did not receive it until February 23, 2022. The tenant testified at first that the Notice of Dispute Resolution Proceedings was received into her junk email folder and that as soon as she spoke to a representative of the Residential Tenancy Branch and discovered that the Notice of Dispute Resolution Proceedings was directed into her junk email folder, she served the landlord. The tenant testified that she did it as soon as she realized what had happened.

Later, the tenant testified that when she attended the landlord's office to pay rent in February and mentioned the dispute resolution hearing to the attendant, the attendant had no idea about the hearing. The tenant then testified that she didn't realize that she was supposed to serve the landlord with her Notice of Dispute Resolution Proceedings and that is what caused the delay.

The tenant does not acknowledge being served with the landlord's Notice of Dispute Resolution Proceedings package. The landlord testified that it was sent via registered mail to the tenant's residential address on February 25, 2022, and the tracking number for the mailing is recorded on the cover page of this decision. The tenant testified that she doesn't check her mail very often, if at all. The tenant acknowledged that when she did check her mail, there were notices from Canada Post advising that there was an item to be picked up at the post office. By the time she saw the card from Canada Post, the time to pickup had expired and the package was sent back to the landlord. The landlord testified that the tenant picked up the landlord's Notice of Dispute Resolution Proceedings package from the office last Friday which the tenant confirmed. I deem the tenant served with the landlord's Notice of Dispute Resolution Proceedings package on March 2, 2022, five days after it was sent by registered mail on February 25th, pursuant to sections 89 and 90 of the Act.

I find the tenant served the landlord with the tenant's Notice of Dispute Resolution Proceedings package on February 23, 2022 pursuant to sections 89 and 90 of the Act.

Preliminary Issue – landlord's legal name

A copy of the tenancy agreement was provided as evidence by the landlord, and the landlord named on the tenancy agreement is a limited company. Both the tenant and the landlord named the caretaker/property manager of the building as the landlord in their respective applications. I have amended both applications to reflect the proper legal name of the landlord as shown on the cover page of this decision pursuant to section 64(3) of the Act.

Issue(s) to be Decided

Should the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on December 1, 2020 with rent set at \$1,300.00 per month payable on the first day of each

month. Rent is currently \$1,319.50 following a rent increase issued in September of 2021. A security deposit of \$650.00 was collected by the landlord at the commencement of the tenancy which the landlord continues to hold.

A 10 Day Notice to End Tenancy for Unpaid Rent/Utilities was served on the tenant by posting a copy to the tenant's door by the landlord on January 11, 2022. A signed, witnessed proof of service form was provided as evidence by the landlord as was a copy of the notice to end tenancy. The tenant acknowledges receiving it on that day.

The notice to end tenancy states the tenant failed to pay \$1,300.00 that was due on January 1, 2022. The landlord testified that the tenant did not pay the \$1,300.00 within five days of receiving the notice. The tenant did pay \$1,200.00 of the January rent on February 17th, and on March 7th the tenant paid an additional \$2,600.00, representing the remainder of the January rent, plus February's rent and a portion of March's rent. On March 11th, the tenant paid an additional \$340.00, and no rent was received for April. For each payment since serving the notice to end tenancy, the landlord issued a receipt indicating the money received was for "use and occupancy" of the rental unit.

The tenant agrees with the accounting for January, February and March as stated by the landlord. The tenant has not paid rent for the month of April because she was not sure whether today's hearing would result in an end to the tenancy.

The tenant testified that she tried to pay January's rent by contacting a rent bank. She testified that she was eligible for a grant to cover the rent owed, but the landlord had to cooperate. Because the landlord was seeking to end the tenancy, the tenant says she was ineligible for money from the rent bank. After telling the rent bank that a dispute resolution hearing has been scheduled, the rent bank supplied her with a cheque for \$2,600.00 and it was given to the landlord.

The tenant testified that she is working on getting funding for a rent supplement through BC Housing.

Analysis

Sections 46(4) and (5) of the Act state:

- (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.

Section 26 of the Act states 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.

The tenant acknowledges receiving the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on January 11, 2022 and filed her application to dispute the notice the following day, on January 12, 2022 in accordance with section 46 of the Act.

In this case, the tenant acknowledged that she did not pay the outstanding \$1,300.00 rent for January within 5 days of receiving the landlord's notice, contrary to section 46(4)(a) of the Act. Although the tenant filed an application to dispute the notice, the dispute can only succeed if the tenant can show she had a right under the Act to deduct all or a portion of the rent under section 26. I find the tenant has not provided evidence of any such right.

As stated in section 26, a tenant must pay rent when it is due under a tenancy agreement. I have examined the tenancy agreement and find it to be clear and unequivocal: rent is due on the first day of the month. As the tenant has not paid the outstanding rent within 5 days of receiving the Notice as required by section 46(4) of the Act, I uphold the landlord's 10 Day Notice to End Tenancy issued on January 11, 2022. The landlord is entitled to an Order of Possession.

I have examined the landlord's notice to end tenancy and find it complies with the form and content provisions of section 52 of the Act. The effective date stated on the notice to end tenancy has passed, and so the landlord is entitled to an Order of Possession effective two days after service upon the tenant.

Pursuant to section 55(1.1), I must grant an order to the landlord requiring the payment of unpaid rent. The landlord is entitled to the following:

Item	Amount
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January 2022 rent	\$1,319.50
February 2022 rent	\$1,319.50
March 2022 rent	\$1,319.50
Prorated rent from April 1 to April 11, 2022 [\$1,319.50/30 x 11(days)]	\$438.81
Less payment made on February 17, 2022	(\$1,200.00)
Less payment made on March 7, 2022	(\$2,600.00)
Less payment made on March 11, 2022	(\$340.00)
Total	\$257.31

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain **\$257.31** of the tenant's security deposit in full satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 11, 2022

Residential Tenancy Branch