

From: [OHCS Residential Tenancy Office OHCS:EX](#)
To: s.22
Subject: RTB File #110052949
Date: Monday, March 7, 2022 12:46:16 PM
Attachments: [CLL DEC 110052949 20220203.pdf](#)

Hello^{s.22}

Thank you for contacting us on this matter.

Please find attached decision for above noted file.

Regards,

Jordan | Information Officer

Residential Tenancy Branch | Office of Housing and Construction Standards
Ministry of Attorney General and Minister Responsible for Housing

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Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110052949

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between
Nanaimo Affordable Housing Society, Landlord(s),
Applicant(s)

And
s.22
Respondent(s)

Regarding a rental unit at: s.22 - 15 Buttertubs Drive, Nanaimo, BC

Date of Hearing: February 03, 2022, by conference call.

Date of Decision: February 03, 2022

Attending:

For the Landlord: Jessica Don, agent

For the Tenant: s.22



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the landlord's Application for Direct Request seeking an order of possession and a monetary order. The hearing was convened in an Interim Decision dated December 7, 2021, as the adjudicator determined that there were questions about the application that could not be adjudicated without the benefit of a participatory hearing.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 19, 2015, for a month to month tenancy beginning on March 1, 2015 for a monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$250.00 and a pet damage deposit of \$100.00 paid.

The agreement included an addendum entitled "Non-Profit Senior Supportive Housing Addendum" which stipulated that the tenant agreed to purchase services from the landlord including approximately 1.5 hours of housekeeping per week; cleaning of bed linens and towels; one meal per day and 24-hour monitoring for personal security.

This addendum also states: "Section 3 of the Residential Tenancy agreement is amended by deleting the words: 'The rent for the rental unit is \$500.00 per month' and replacing with the words 'The rent for the rental unit is \$500.00 per month including the cost of support services'".

The landlord submitted into evidence a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 14, 2021, with an effective vacancy date of October 31, 2021, citing the tenant had failed to pay rent in the amount of \$2,066.00.

The landlord submitted into evidence a copy of a document entitled "Household Statement", which is in essence a tenant ledger. In this document the charges, on a monthly basis, include Rent (\$500.00 until September 1, 2021, then increased to \$575.00); SSH (\$73.32 for support services); internet (\$45.00); and phone (\$30.00). The total amount owing on this ledger for the date the landlord issued the Notice to End Tenancy was \$2,066.00

Analysis

Section 46 allows 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. However, 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.

In addition, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

The section goes on to say that if a tenant who has received a notice under this section does not pay the rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

While the tenant, in this case, did not dispute the Notice to End Tenancy and would normally be considered as conclusively presumed to have accepted the tenancy, the landlord still must establish that on the date the Notice was issued there was any rent owing.

As the landlord's Household statement includes charges in addition to rent as well as lump sum payments that had led to the total outstanding amount of \$2,066.00, I cannot determine if the amounts owing were for rent or for the support services; internet; or phone charges.

In addition, the addendum to the tenancy agreement indicates that the support services were included in the total amount of rent of \$500.00 so it is unclear why the tenant would have been paying an additional charge for those services. If the tenant should not have been paying those additional charges from the beginning of the tenancy when the tenancy agreement specifically included them in the rent amount there may be no outstanding rent at all.

As a result, I find the landlord has failed to establish that any rent was owed on the day the notice was issued. Therefore, I order the Notice to End Tenancy for Unpaid Rent issued on October 14, 2021, is of no force or effect and is hereby cancelled.

As to the landlord's monetary claim was specifically for unpaid rent and the total amounts sought include the additional charges, I dismiss the monetary portion of the landlord's application. However, I will grant the landlord leave to reapply for their monetary claim, which would require the landlord to clearly identify and include rent as well as other charges outlined in the Household Statement.

Conclusion

Based on the above, I dismiss the landlord's request for an order of possession 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: February 03, 2022


R. Maddia, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)



From: [OHCS Residential Tenancy Office OHCS:EX](#)
To: ["Jordan"](#)
Cc: [Jessica Don](#)
Subject: RE: RTB FILE 110052949 - Adjourned Participatory Hearing
Date: Wednesday, December 15, 2021 5:02:00 PM
Attachments: [image004.png](#)
[image006.png](#)

Hi Jordan,

Thank you for letting us know. You should always go by what is stated by the arbitrator:

“Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.” (found in the Conclusion section of the decision.)

Regards,

Jovi | Information Officer
Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Attorney General and Minister Responsible for Housing

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From: Jordan <jordan@nahs.ca>
Sent: Wednesday, December 15, 2021 10:44 AM
To: OHCS Residential Tenancy Office OHCS:EX <HSRTO@gov.bc.ca>
Cc: Jessica Don <jessica@nahs.ca>
Subject: RE: RTB FILE 110052949 - Adjourned Participatory Hearing

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Good morning Jordan,

I am hoping you can provide some clarifying information regarding this email.

In the body of the email it is stated that the documents do not need to be served to the other party:

“Documents attached to this email are for your reference, they do not have to be served to the other party”

But in the document itself, there is the following passage:

Dispute Number: 110052949 - Wednesday, December 8, 2021

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

Supporting documents required:

- A copy of all pages of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30)
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- A copy of the tenancy agreement (including the addendum if there is one)
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- A copy of all Notices of Rent Increase since the tenancy began, if rent has increased
- If any rent was received after the 10 Day Notice to End Tenancy was issued, a copy of any receipts issued to the tenant

Are we still required to deliver these documents?

Thank you,

Jordan Rousselle

Communications Coordinator

Nanaimo Affordable Housing Society

jordan@nahs.ca

250.754.5344

www.nahs.ca



From: OHCS Residential Tenancy Office OHCS:EX <HSRTO@gov.bc.ca>

Sent: Wednesday, December 8, 2021 1:23 PM

To: Jordan <jordan@nahs.ca>

Subject: RTB FILE 110052949 - Adjourned Participatory Hearing



Your hearing has been adjourned

The following documents are included in this email:

1. *New* Notice of Dispute Resolution Proceeding
2. Interim Decision

Please review the Notice of Dispute Resolution to confirm:

1. Date of hearing
2. Time of hearing
3. Access code to enter the conference call hearing

Please review the Interim Decision for any additional instructions.

Documents attached to this email are for your reference, they do not have to be served to the other party

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Regards,

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From: [OHCS Residential Tenancy Office OHCS:EX](#)
To: ["Jordan"](#)
Cc: [Jessica Don](#)
Subject: RE: RTB FILE 110052949 - Adjourned Participatory Hearing
Date: Thursday, December 16, 2021 11:01:00 AM
Attachments: [image004.png](#)
[image005.png](#)

Hi Jordan,

Thank you for your reply. We cannot give out any extensions, but what you can do is explain to the arbitrator what happened and you can upload the evidence of the email correspondence into your file. The arbitrator would be the one who decides if anyone was negatively impacted by the late service and whether or not things can proceed normally.

If the hearing is still really far away and no one is complaining about not having enough time to prepare, then usually it doesn't even come up as an issue. The times where it becomes an issue is if one side complains that they were served late and explains to the arbitrator how they were negatively impacted by it.

Regards,

Jovi | Information Officer
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To: OHCS Residential Tenancy Office OHCS:EX <HSRTO@gov.bc.ca>
Cc: Jessica Don <jessica@nahs.ca>
Subject: RE: RTB FILE 110052949 - Adjourned Participatory Hearing

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Good morning Jovi,

Thank you for the quick response.

Unfortunately, due to the mixed message, we did not deliver the Notice package within the required 3 days.

Is it possible to get an extension given the new information?

Thank you,

Jordan Rousselle

Communications Coordinator
Nanaimo Affordable Housing Society
jordan@nahs.ca
250.754.5344
www.nahs.ca



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