



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: **FFT, CNR, CNC, OLC, MNDCT, RR, PSF, AAT**
Landlord: **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
4. An Order for repairs made to the unit, contacted the Landlord in writing about repairs but they have not been completed pursuant to Section 32 of the Act;
5. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act;
6. An Order for the Landlord to [allow access to the unit for me and/or my guests](#) pursuant to Section 70 of the Act;
7. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
8. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with, via cross-application, the Landlord's application pursuant to the Act for:

1. An Order of Possession for Unpaid Rent pursuant to Sections 46 and 55 of the Act;

2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, MZ, and the Tenant, MJZ, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on October 29, 2021. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on October 29, 2021 pursuant to Section 88(a) of the Act.

The Landlord personally served the 10 Day Notice on November 3, 2021. The Tenant, at the hearing, did not confirm receipt of the 10 Day Notice; but, in his application for dispute resolution he confirms he personally received the 10 Day Notice. I find that the 10 Day Notice was served on the Tenant on October 29, 2021 pursuant to Section 88(a) of the Act.

The Tenant confirmed that he applied for dispute resolution for the One Month Notice and the 10 Day Notice on November 3, 2021. The RTB emailed the Notice of Dispute Resolution Proceeding package for this hearing (the “NoDRP package”) on November 5, 2021. The Tenant testified he first saw the NoDRP package on January 7, 2022, and he did not serve the NoDRP package on the Landlord. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations (e.g.: by email).

As the Tenant did not serve the Landlord at all with the NoDRP package or his evidence, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenant's application against the Landlord. I dismiss all of his claims related to the possession of the unit without leave to re-apply as these will be dealt with in this application. The Tenant's claim for an Order for compensation for a monetary loss is dismissed with leave to re-apply.

The Landlord served her Notice of Dispute Resolution Proceeding package for this hearing to the Tenant by posting the notice on his door on November 15, 2021 (the "NoDRP package-OP"). The Landlord said the NoDRP package-OP is still on the door. I find that the Tenant was deemed served with the documents for this hearing three days after posting, on November 18, 2021, in accordance with Sections 89(2)(d) and 90(c) of the Act.

Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the Landlord's request to amend her original application from \$1,050.00 to \$2,100.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for Unpaid Rent?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before 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 this periodic oral tenancy began in the last week in May 2021, but the Landlord stated that the Tenant did not owe rent for that last week in May. Monthly rent is \$700.00 payable on the first day of each month. A security deposit of \$350.00 has not been paid by the Tenant as he said he was not asked for one. The Landlord said a \$350.00 security deposit is owed by the Tenant.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk; the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and, the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

The 10 Day Notice stated that the Landlord was ending the tenancy because the Tenant failed to pay rent in the amount of *\$700.00 + \$350.00 damage deposit on November 1, 2021*. The effective date of the 10 Day Notice was November 30, 2021.

The Landlord reported that rent was paid as follows:

RENT	Rent Owing	Rent Amount Paid	Total O/S Rent
June 2021	\$700.00	\$0.00	\$700.00
June 4		\$700.00	\$0.00
July 2021	\$700.00	\$0.00	\$700.00
paid after July 1		\$700.00	\$0.00
August 2021	\$700.00	\$0.00	\$700.00
paid after August 1		\$700.00	\$0.00
September 2021	\$700.00	\$700.00	\$0.00
October 2021	\$700.00	\$700.00	\$0.00
November 2021	\$700.00	\$0.00	\$700.00
December 2021	\$700.00	\$0.00	\$1,400.00
January 2022	\$700.00	\$0.00	\$2,100.00

The Tenant testified that everything the Landlord said was a lie. He stated that the Landlord cut off his services, leaving him without water or heat. He said he can only run two electrical services at a time, otherwise the breaker blows. He maintained because he has no heat, he has not paid the rent. The Tenant stated he wants to get a job, make some money, move out and never go back.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$2,100.00.

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.

Section 26(1) of the Act specifies the rules about payment of rent. It 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.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

- 46 (1) *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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (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.*

...

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act which state:

- 52 *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
 - (e) when given by a landlord, be in the approved form.*

The Tenant admits he has not paid the overdue rent because the Landlord cut off his services. Pursuant to Section 26(1), the Tenant is required to pay rent when it is due

whether or not the landlord complies with this Act, the regulations or the tenancy agreement. The Tenant did apply for dispute resolution but did not serve the NoDRP package on the Landlord as required. I have dismissed all his claims in his application without leave to re-apply, except for his claim for an Order for compensation for a monetary loss which I dismiss with leave to re-apply. Pursuant to Section 46(5)(a), I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date, which was November 30, 2021.

As the Tenant failed in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

- 55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

As I have dismissed the Tenant's application in its entirety, I uphold the Landlord's 10 Day Notice and I find the total outstanding rent is \$2,100.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. The Tenant admits to not paying rent since November 1, 2021. I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act and is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. Since the Landlord was successful in her claim, I grant her recovery of the application filing fee pursuant to Section 71(1) of the Act. The Landlord's Monetary award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$2,100.00
Plus recover Filing Fee:	\$100.00
TOTAL OWING:	\$2,200.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$2,200.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 Act.

Dated: January 18, 2022

Residential Tenancy Branch