



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, FFT**

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; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, JB, and her Agent, BP, attended the hearing at the appointed date and time. The Tenant, LS, and her two supports, BW and PB, 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 (the "ROP") prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Tenant the 10 Day Notice on November 16, 2021. The Tenant confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenant on November 16, 2021 pursuant to Section 88(a) of the Act.

The Tenant was issued the Notice of Dispute Resolution Proceeding package (the "NoDRP package") for this hearing on November 25, 2021, and payment of the application filing fee was processed on November 23, 2021. The Tenant provided a letter from a witness who observed her serve the NoDRP package on the Landlord's

Agent on November 28, 2021. I find that the Tenant served the NoDRP package on the Landlord pursuant to Section 89(1)(a) of the Act.

The Tenant confirmed she personally served the Landlord's Agent with her evidence on December 16, 2021, which consequently was the same day that she uploaded the evidence on the RTB Document Management System. I find that the Tenant's evidence was served according to Section 88(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's 10 Day Notice?
2. Is the Tenant entitled to recovery of the application filing fee?
3. If the Tenant is unsuccessful in her application, is the Landlord entitled to an Order of Possession?
4. If the Landlord is entitled to an Order of Possession, is the Landlord also entitled to a Monetary Order for recovery of unpaid rent?

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.

This tenancy began while the Landlord respondent's husband was alive. He passed away on January 24, 2020. The parties agreed that this tenancy began as a fixed term tenancy on August 5, 2017 and ending on August 5, 2018. After this period, the tenancy continued on a month-to-month basis. Monthly rent is \$800.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord.

The 10 Day Notice stated the reason why the Landlord was ending the tenancy was because the Tenant owed \$8,800.00 in outstanding rent as of November 1, 2021. The effective date of this 10 Day Notice was November 25, 2021. The Tenant said this was the third 10 Day Notice she received in this tenancy.

The Landlord provided a listing of the rent paid, and what is still outstanding up to date. The Tenant said she had no objections with the amounts the Landlord submitted. Rent payment history is as follows:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
May 2020	\$800.00	\$123.77	\$676.23
June 2020	\$800.00	\$400.00	\$1,076.23
July 2020	\$800.00	\$340.00	\$1,536.23
August 2020	\$800.00	\$400.00	\$1,936.23
September 2020	\$800.00	\$400.00	\$2,336.23
October 2020	\$800.00	\$340.65	\$2,795.58
November 2020	\$800.00	\$400.00	\$3,195.58
December 2020	\$800.00	\$400.00	\$3,595.58
January 2021	\$800.00	\$400.00	\$3,995.58
February 2021	\$800.00	\$400.00	\$4,395.58
March 2021	\$800.00	\$400.00	\$4,795.58
April 2021	\$800.00	\$400.00	\$5,195.58
May 2021	\$800.00	\$400.00	\$5,595.58
June 2021	\$800.00	\$400.00	\$5,995.58
July 2021	\$800.00	\$400.00	\$6,395.58
August 2021	\$800.00	\$400.00	\$6,795.58
September 2021	\$800.00	\$400.00	\$7,195.58
October 2021	\$800.00	\$400.00	\$7,595.58
November 2021	\$800.00	\$400.00	\$7,995.58
December 2021	\$800.00	\$400.00	\$8,395.58

The Tenant wanted to clarify more of the repair items that needed addressing. The Tenant testified that if there were any repairs needed to be done, she did the repairs, and the former Landlord paid her back. She stated did not have any formal decision from the RTB that she was permitted to holdback any rent amounts.

The Tenant testified that she is planning on moving out, but the housing availability in her area is very limited. One potential new landlord wanted a reference, so she gave that person her current Landlord's name, but the Landlord did not provide a favourable reference, so the Tenant was not successful in securing alternate living arrangements.

On March 18, 2019, the Landlord wrote to the Tenant that '*Rent must be paid in full*'. On November 1, 2021, the Landlord wrote the Tenant that '*rent paid should be in full(\$800) by cheque.*' The Landlord did not waive her right to be paid full rent when it is due on the first day of the month.

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 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.

I find that these parties have an ongoing tenancy, and that rent is due on the first day of the month. I reviewed the RTB's Document Management System, and I did not find any previous applications for repairs to the rental property. I also find that the Tenant does not have any formal orders from the RTB to holdback a portion of the rental amount.

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.

The Landlord's 10 Day Notice was served on November 16, 2021. The Tenant had 5 days after receiving the 10 Day Notice to either pay the overdue rent or apply for dispute resolution. Day 5 after service of the 10 Day Notice was November 21, 2021. This was a Sunday, so according to ROP definitions for *Days*, *b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.* The Tenant had until November 22, 2021 to make an application for dispute resolution. The Tenant applied for dispute resolution on November 23, 2021. I find the 10 Day Notice submitted into documentary evidence complies with Section 52 of the Act. I also find that the Tenant neither paid the outstanding rent within the 5 days provided in Section 46(4)(a) of the Act nor applied for dispute resolution of the notice pursuant to Section 46(4)(b) of the Act.

In accordance with Section 46(5), I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was November 25, 2021 and must vacate the rental unit pursuant to Section 55 of the Act. I dismiss the Tenant's application in its entirety without leave to re-apply.

Section 55(2) of the Act reads as follows:

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

...

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],

(a) grant an order of possession, and

- (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I find that based on the Landlord's testimony and submitted documentation of when rent was owing, and what rent was paid, and based on the conclusive presumption that the tenancy has ended, it is the Landlord's right to seek an Order of Possession for unpaid rent. I grant an Order of Possession to the Landlord which will be effective on January 31, 2022.

I find that the amount of unpaid rent is \$7,995.58. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$7,995.58, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$8,395.58
Less security deposit:	\$400.00
TOTAL OWING:	\$7,995.58

Conclusion

The Landlord's 10 Day Notice is upheld, and I grant an Order of Possession to the Landlord effective on January 31, 2022. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlord a Monetary Order in the amount of \$7,995.58, and 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.

The Tenant's application for dispute resolution is dismissed in its entirety.

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 10, 2022

Residential Tenancy Branch