



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ace Agencies
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This adjourned 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. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 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 the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

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

1. An Order of Possession further to issuance of the 10 Day Notice that was not paid in the required time pursuant to Sections 46 and 55 of the Act;
2. A Monetary Order to recover the money for the unpaid rent and/or utilities 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's Property Manager, JB, Administrator, LK, and the Tenant, DM, 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 10 Day Notice on November 5, 2021 and provided Form #RTB-34 Proof of Service of that document. The Tenant confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenant on November 5, 2021 pursuant to Section 88(a) of the Act.

The RTB emailed the Notice of Dispute Resolution Proceeding package to the Tenant on November 15, 2021 (the “NoDRP package”). On December 6, 2021, the Tenant was granted permission to substitutionally serve the NoDRP package and evidence to the Landlord by email. The Tenant emailed the NoDRP package to the Landlord on November 18, 2021. The Landlord confirmed receipt of the NoDRP package on November 18, 2021. The Tenant sent a follow up email on January 18, 2022 with her evidence attached. I find that the Tenant served the Landlord with the NoDRP package on November 18, 2021 pursuant to Section 43(2) of the Residential Tenancy Regulation (the “regulation”). I find that the Tenant served the Landlord with her evidence documents on January 18, 2022 pursuant to Section 43(2) of the regulation.

The Landlord served their Notice of Dispute Resolution Proceeding package for this hearing to the Tenant via Canada Post registered mail on November 17, 2021 (the “NoDRP-OP/MN package”). The Landlord also served their evidence to the Tenant via Canada Post registered mail on January 12, 2022. The Landlord referred me to the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenant confirmed receipt of the NoDRP-OP/MN package and evidence. I find that the Tenant was deemed served with the NoDRP-OP/MN package five days after mailing them, on November 22, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act. I also find that the Tenant was deemed served with the Landlord’s evidence five days after mailing them, on January 17, 2022, in accordance with Sections 88(c) and 90(a) of the Act.

Preliminary Matters

Unrelated claims

As previously stated in the Interim Decision, I advised the parties that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the 10 Day Notice and the claim for recovery of the application filing fee at this proceeding. The Landlord's cross application, as these claims are related, will be considered. The Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

Amend application for unpaid rent

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, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's request to amend their original application from \$2,900.00 to \$5,613.50 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Tenant:

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?

Landlord:

1. Is the Landlord entitled to an Order of Possession for unpaid rent?
2. Is the Landlord entitled to a Monetary Order to recover the money for the 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 agreed that this tenancy began as a fixed term tenancy on December 15, 2019. The Tenant stated that the home was not cleaned and move in ready until January 13, 2020. The fixed term ended on December 31, 2020, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,350.00, but increased to \$1,370.25 in January 2022. Rent is payable on the first day of each month. A security deposit of \$675.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason noted on the 10 Day Notice why the Landlord is ending the tenancy is because the Tenant owed \$2,900.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 15, 2021.

The Tenant stated in her documentary evidence that the Landlord had been advised that the rental unit was in a filthy state prior to the Tenant moving in, but she said the Landlord ignored her email messages and that *“This became a pattern throughout the tenancy with [the Landlord] regularly ignoring emails and refusing to deal with issues involving the residence that fell under her duties as a property manager.”*

A bedbug infestation occurred in the Tenant's first summer in the rental unit. There was an initial heat treatment in the rental unit. In the summer of 2021, the bedbug infestation came back. The Tenant said she was forced again to stay in hotels but this time she said she needed reimbursement for the hotels, her bedding and her headboard. The Tenant claims that in emails from August 1, 2021, there were discussions with the Landlord where the Tenant was providing hotel receipts to show these expenses. The Tenant relies on an email dated October 27, 2021 where she states she was seeking to confirm the amount owing to the Landlord or what would be covered by the owner's insurance. It states:

Wed 10/27/2021 1:43 PM

To: You

I did get your email and have responded regarding all the financial stuff as I have a lot of paperwork to go thru from the insurance to make things straight. We shall have a furnace person call you about the furnace and also I will make the adjustment on the Tenancy Agreement regarding [other Tenant].

Something you should be aware of is the Koi fish are being re-located likely next week

Once I get all my numbers straight I will send you an email.

[Landlord], Property Management

A further email reply from the Landlord states:

Fri 10/29/2021 6:38 PM

To: You

Hello [Tenant], the fish are being re homed on the owners request. They were supposed to rehomed long ago but it's only been recent that we have gotten a serious person with a proper pond. I will also this week give you a break

down on what the insurance people have come up with.

I'll be coming to the property tomorrow regarding fish.

The Tenant is claiming that the doctrine of promissory estoppel applies in this matter. The Tenant testified that based on emails between the Landlord and herself, she thought her rent would be covered. The Tenant stated that she and the Landlord agreed that up to November 2021, her hotel stays would be covered.

The Tenant relies on emails dating back to August 2021. A review of those emails shows mostly the Tenant's emails talking about hotel costs, insurance coverage, and the tribulations about the bed bug infestation. On October 18, 2021, the Tenant writes that neither the Landlord nor the homeowner offered to cover the hotel expenses or allow the Tenant to deduct them off future rent payments, she states, '*which was not offered to us at any time. ... Our insurance has advised that the homeowner should be able to recover those amounts from their policy as the home was not habitable during the time we were forced to live in hotels due to infestation and then fire.*'

LK provided a breakdown of when rent was due, and what was paid whether that was from the homeowner's insurance coverage or the Tenant. It follows:

RENTAL MONTH	Rent Owing	Insurance*/ Rent** Amounts Paid	O/S Rent Total
August 2021	\$1,350.00	\$0.00	\$1,350.00
September 2021	\$1,350.00	\$0.00	\$2,700.00
October 2021	\$1,350.00	\$0.00	\$4,050.00
November 2021	\$1,350.00	\$2,500.00*	\$2,900.00
December 2021	\$1,350.00	\$0.00	\$4,250.00
January 2022	\$1,370.25	\$0.00	\$5,620.25
February 2022	\$1,370.25	\$1,377.00**	\$5,613.50
TOTAL OUTSTANDING RENT:			\$5,613.50

At the hearing, the Tenant proposed a settlement amount, which is just the outstanding rent owing, however, the Landlord respectfully declined the settlement proposition. The Tenant confirmed that she has not received an RTB decision allowing her to deduct amounts from her required rental payments.

The Landlord testified that when the Tenant paid rent on February 2, 2022, they issued her a receipt stating that the rent received was for use and occupancy only. The Landlord is seeking an Order of Possession and a Monetary Order totalling \$5,613.50 for unpaid rent for the rental unit.

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.

The Tenant uploaded a large amount of evidence, and I want to point out to the parties that RTB Rules of Procedure 7.4 states that '*Evidence must be presented by the party who submitted it, or by the party's agent.*' I note this is a guiding principle for parties in dispute resolution, or any legal matter, to bring their best evidence forward. The Tenant did not point out the specific emails she wanted to rely on, aside from mentioning dates.

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

Landlord's notice: non-payment of 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.*
- ...

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 26(1) of the Act, 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 applied for dispute resolution on November 9, 2021.

The doctrine of promissory estoppel is well established law in equity. In *Maracle v. Travellers Indemnity Co. of Canada*, 1991 CanLII 58 (SCC), [1991] 2 SCR 50, the court stated that "*The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position.*"

The Tenant submitted that promissory estoppel applies in her case, but I find the Tenant has not shown how the Landlord, by words or conduct, agreed or made a promise to the Tenant about her rent payments being covered. On October 27, 2021, the Landlord wrote to the Tenant that *'[o]nce I get all my numbers straight I will send you an email'*, and on October 29, 2021, the Landlord wrote, *'I will also this week give you a break down on what the insurance people have come up with.'*

The Tenant confirmed she did not have an arbitrator's order that permitted her to withhold any amount of rent, and the Landlord's application in this matter satisfies me that the Landlord did not consent to the Tenant withholding rent. After receiving the 10 Day Notice, the Tenant had five days to pay the outstanding rent amount, but she did not do this. I find that her dispute application does not establish any legal doctrine that would enable her to cancel the Landlord's 10 Day Notice. Accordingly, I dismiss the Tenant's application to cancel the 10 Day Notice without leave to re-apply.

As the Tenant failed in her 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 to cancel the 10 Day Notice, I uphold the Landlord's 10 Day Notice and I find the total outstanding rent is \$5,613.50. 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 did not pay the outstanding rent after receiving the 10 Day Notice and was in arrears before service of the 10 Day Notice. 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 their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$5,613.50
Less security deposit:	-\$675.00
Plus filing fee:	\$100.00
TOTAL OWING:	\$5,038.50

Conclusion

The Landlord is granted an Order of Possession, which will be effective on February 28, 2022 at 1:00 p.m. The Landlord must serve this Order 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 \$5,038.50. 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 to cancel the 10 Day Notice is dismissed without leave to re-apply.

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: February 23, 2022

Residential Tenancy Branch