



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sidhu Homes and Construction
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, LRE, LAT, OLC, FFT**

Introduction

This hearing dealt with the Tenants' 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. Authorization to change the locks on the rental unit pursuant to Section 70 of the Act;
3. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 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.

The hearing was conducted via teleconference. The Landlord, MS, and Landlord's Agent, SM, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, the Landlord's Agent, and I were the only ones who had called into this teleconference. The Landlord and the Landlord's Agent were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord and the Landlord's Agent that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute

resolution hearings. The Landlord and the Landlord's Agent testified that they were not recording this dispute resolution hearing.

The Landlord's Agent personally served the 10 Day Notice on November 4, 2021. The Landlord witnessed this service. The Landlord's Agent also served the 10 Day Notice via registered mail on November 4, 2021. SM referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the 10 Day Notice was served on the Tenants on November 4, 2021 pursuant to Sections 88(a) and 88(c) of the Act.

The Landlord's Agent served their evidence on the Tenants via registered mail on January 7, 2022. SM referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord's evidence was deemed served on the Tenants on January 12, 2021 pursuant to Sections 88(c) and 90(a) of the Act

The Tenants applied for dispute resolution for the 10 Day Notice on November 12, 2021. The RTB emailed the Notice of Dispute Resolution Proceeding package for this hearing to the Tenants (the "NoDRP package") on November 16, 2021. The Landlord's Agent said the Tenants did not serve the NoDRP package on the Landlord. The Landlord's Agent said they had to attend the rental unit with the Royal Canadian Mounted Police and he was informed by the mother that the Tenants were disputing the 10 Day Notice. The Landlord's Agent gave the mother a business card and told her that the Tenants could serve the Landlord by email. The Landlord's Agent called the RTB on February 1, 2022 and received the NoDRP package from an Information Officer.

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 Tenants did not serve the Landlord at all with the NoDRP package or their 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 Tenants' application against the Landlord. I dismiss all of their claims related to the possession of the unit without leave to re-apply as these will be dealt with in this application.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession and a Monetary Order for the unpaid rent?

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, 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 \$6,100.00 to \$14,500.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

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 periodic tenancy began on August 1, 2020. Monthly rent is \$2,800.00 payable on the first day of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the Landlord.

The 10 Day Notice stated the Landlord was ending the tenancy because the Tenants failed to pay rent in the amount of \$6,100.00 which was due on November 1, 2021. The effective date of the 10 Day Notice was November 19, 2021.

The Landlord's Agent reported the rent owing as follows:

RENT	Rent Owing	Date Paid	Rent/Partial Amount Paid	O/S Rent Total
August 2021	\$2,800.00	August 9	\$2,800.00	\$0.00
September 2021	\$2,800.00	September 17	\$2,300.00	\$500.00
October 2021	\$2,800.00	---	\$0.00	\$3,300.00
November 2021	\$2,800.00	---	\$0.00	\$6,100.00
December 2021	\$2,800.00	---	\$0.00	\$8,900.00
January 2022	\$2,800.00	---	\$0.00	\$11,700.00
February 2022	\$2,800.00	---	\$0.00	\$14,500.00

The Landlord is seeking an Order of Possession and a Monetary Order for the unpaid rent in the amount of \$14,500.00.

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. As this hearing was conducted pursuant to ROP 7.3, in the Tenants' absence, all the Landlord's testimony is undisputed.

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 Tenants neither attended this hearing nor provided any evidence. Pursuant to Section 26(1), the Tenants are required to pay rent when it is due whether or not the Landlord complies with this Act, the regulations or the tenancy agreement. The Landlord served the 10 Day Notice on November 4, 2021. The Tenants had until November 9, 2021 to apply for dispute resolution. The Tenants applied for dispute resolution on November 12, 2021 but did not serve the NoDRP package on the Landlord as required. I have dismissed all their claims in their application without leave to re-apply. Pursuant to Section 46(5)(a), I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date, which was November 19, 2021.

As the Tenants failed in their 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 Tenants' application in its entirety, I uphold the Landlord's 10 Day Notice and I find the total outstanding rent is \$14,500.00. RTB Rules of Procedure

4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. The Tenants have not appeared to provide evidence in this hearing, so all the Landlord's evidence is undisputed. 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. The Landlord's Monetary award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$14,500.00
Less security deposit:	-\$1,400.00
TOTAL OWING:	\$13,100.00

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 \$13,100.00. 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: February 03, 2022

Residential Tenancy Branch