



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WELBEC QUESNEL LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC-MT, 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 One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for more time to dispute the notice pursuant to Section 66 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 Manager, JM, and the Tenant, LMB, and Agent, LS, 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 served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 10, 2021 by posting the notice on the Tenant's door (the "10 Day Notice"). The Landlord provided a #RTB-34 proof of service form for service of the 10 Day Notice. The Tenant confirmed receipt of the 10 Day Notice. I find this 10 Day Notice was deemed served on December 13, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenant with the One Month Notice on December 27, 2021 by posting the notice on the Tenant's door. The Landlord provided a #RTB-34 proof of service form for service of the One Month Notice. The Tenant confirmed receipt of the One Month Notice. I find this One Month Notice was deemed served on December 30, 2021 according to Sections 88(g) and 90(c) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package for the One Month Notice to the Landlord via Canada Post registered mail on January 21, 2022 (the "NoDRP package"). LS 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. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package for this hearing five days after mailing them, on January 26, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matters

Amend Party Name

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant named the Landlord, not by the business name, but by using the Manager's name. In the hearing, the Manager provided the business name of the Landlord which is different than the name in the tenancy agreement in this matter. The Manager testified that the Landlord listed on the tenancy agreement sold to the current Landlord in 2018. I asked the parties if I had their agreement to amend the Landlord's party name in the application. All parties agreed, and the correct Landlord name is noted in the style of cause of this decision.

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 that the Landlord is properly named as the current company name and not the Manager's name. I amended the Landlord's name and it is reflected in this decision.

Tenant's Claim for More Time

I asked the Tenant at the start of the hearing about her claim requesting more time to dispute the notice. I note that the Tenant applied for dispute resolution on the last day

within the 10 day period after receipt of the One Month Notice. The Tenant confirmed that she does not need more time. I dismiss her claim requesting more time to dispute the notice without leave to re-apply as it is no longer needed.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's One Month Notice?
2. If the Tenant fails in her application, is the Landlord entitled to an Order of Possession?
3. Is the Tenant 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 tenancy began as a fixed term tenancy on August 1, 2015. The fixed term ended on August 31, 2016 and the tenancy continued on a month-to-month basis. Monthly rent is \$580.00 payable on the first day of each month. A security deposit of \$290.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$1,160.00 in outstanding rent on December 1, 2021. The effective date of the 10 Day Notice was December 20, 2021.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent. Details of the causes on the One Month Notice state:

Continues to pay rent late. Landlord goes to her door as she claims she has a disability[sic] . She however calls a week after the rent day, or on a weekend and never on rent day.

The effective date of the One Month Notice was January 31, 2022.

The Landlord submitted a Lease Ledger into evidence. This document shows the Tenant's history of rent payments starting November 1, 2018 when the new company took over the building. The Ledger's rent account from November 1, 2021 was:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
November 2021	\$580.00	\$0.00	\$1,160.00
November 17, 2021		\$580.00	\$580.00
December 2021	\$580.00	\$0.00	\$1,160.00
December 13, 2021		\$580.00	\$580.00
January 2022	\$580.00	\$0.00	\$1,160.00
January 4, 2022		\$580.00	\$580.00
TOTAL OUTSTANDING RENT:			\$580.00

From the beginning of 2021, the Tenant has had a running outstanding rent amount between one month's rent to two month's rent. On December 1, 2021, after applying the required rent for December 1, the Tenant owed \$1,160.00 in outstanding rent. The Landlord served the 10 Day Notice on December 10, 2021, and the Tenant paid \$580.00 on December 13, 2021.

The Landlord is not agreeable to creating a debt repayment plan for the Tenant, although she says she has done this lots of times.

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.

For the Tenant's benefit, 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 is the relevant section for this matter. It states:

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.*
- (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 deemed served on December 13, 2021. The Tenant had until December 18, 2021 to pay the overdue rent or apply for dispute resolution for the 10 Day Notice. The Tenant paid \$580.00 on December 13, 2021, but still owed \$580.00 on December 18, 2021. The Tenant did not pay the outstanding rent of \$580.00 by December 18, 2021, and did not apply for dispute resolution of the 10 Day Notice. I find, pursuant to Section 46(5)(a) that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice. I find the December rent balance was late and is grounds to end this tenancy. I also would have found that the Tenant has been repeatedly late paying rent in this tenancy based on the One Month Notice. The Tenant's application for dispute resolution to cancel the One Month Notice is dismissed without leave to re-apply.

As the Tenant has 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.*

I find that the 10 Day Notice complies in form and content with Section 52 of the Act. I also uphold the Landlord's 10 Day Notice and grant an Order of Possession to the Landlord which will be effective on February 28, 2022 at 1:00 p.m.

Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct money owed from the security deposit the Landlord holds. In accordance with Section 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of \$290.00, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT as of January 4, 2022:	\$580.00
Less security deposit:	-\$290.00
TOTAL OWING:	\$290.00

The Landlord remains at liberty to re-apply for a monetary order for any additional unpaid rent or other losses.

Conclusion

The Landlord is granted an Order of Possession which will be effective on February 28, 2022 at 1:00 p.m. The Order of Possession must be served on the Tenant. The Order of

Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant the Landlord a Monetary Order in the amount of \$290.00, 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 is dismissed in its entirety 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 18, 2022

Residential Tenancy Branch