



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, CNR, OLC**

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. An Order for a rent reduction for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord 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 and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord personally served the Tenants the 10 Day Notice on November 5, 2021. The Landlord stated he had a witness with him when he served the notice, and that witness provided a letter confirming service of the 10 Day Notice which was submitted

into the Landlord's documentary evidence package. I find that the 10 Day Notice was served on the Tenants on November 5, 2021 pursuant to Section 88(a) of the Act.

The Landlord testified that the Tenants served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail (the "NoDRP package"). As the Tenants did not attend this hearing, they did not provide proof of service of the NoDRP package on the Landlord. Rules of Procedure 3.5 and 7.4 state:

3.5 Proof of service required at the dispute resolution hearing: At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

7.4 Evidence must be presented: Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Due to the Tenants not attending this hearing and not providing proof of service of their NoDRP package, the Tenants' claims are dismissed in their entirety without leave to re-apply.

Issues to be Decided

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

The Landlord testified that the tenancy began on September 1, 2020 as a fixed term tenancy. Beginning September 2021, the tenancy continued as a month-to-month tenancy. Monthly rent was \$1,250.00 in 2021, but starting in January 2022 there was a

1.5% rent increase, and the monthly rent is now \$1,268.75 payable on the last day of each month for the next month's rent. A security deposit of \$625.00, and a pet damage deposit of \$625.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$1,250.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 15, 2021.

The Landlord provided the following evidence of the outstanding rent:

RENT	Rent Owing	Rent Amount Paid	Total O/S Rent
October 31, 2021	\$1,250.00	\$0.00	\$1,250.00
November 24		\$1,000.00	\$250.00
November 25		\$269.00	-\$19.00
November 30, 2021	\$1,250.00	\$0.00	\$1,231.00
December 31, 2022	\$1,268.75	\$0.00	\$2,499.75
January 5		\$1,000.00	\$1,499.75

The Landlord is seeking an Order of Possession and a Monetary Order for \$1,499.75 for unpaid rent.

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 Rules of Procedure 7.3, in the Tenants' absence, all the Landlord's testimony is undisputed.

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.

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 Tenants applied for dispute resolution on November 11, 2021 before the five day time limit to dispute the notice. The Tenants were issued the NoDRP package on November 15, 2021 and did serve it on the Landlord but did not attend this hearing or provide proof of service of the NoDRP package. I dismissed their application in its entirety based on the Tenants non-participation. I find the 10 Day Notice submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act.

In accordance with Section 46(5), I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was November 15, 2021 and must vacate the rental unit pursuant to Section 55 of the Act.

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.*

I find that based on the Landlord's testimony 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 uphold the Landlord's 10 Day Notice. I grant an Order of Possession to the Landlord pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants.

I find that the amount of unpaid rent is \$1,499.75. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit and pet damage 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 \$249.75, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$1,499.75
Less security deposit:	-\$625.00
Less pet damage deposit:	-\$625.00
TOTAL OWING:	\$249.75

Conclusion

The Landlord's 10 Day Notice is upheld, and I grant an Order of Possession to the Landlord effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$249.75. The Tenants must be served with this Order as soon as possible. Should the Tenants 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 07, 2022

Residential Tenancy Branch