



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Win-Max Enterprises Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants: **LRE, RR, CNR, OLC**
Landlords: **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlords' 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 suspend or set conditions on the Landlords' right to enter the rental unit pursuant to Section 70 of the Act;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
4. An Order for the Landlords to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

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

1. An Order of Possession for Unpaid Rent pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent 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 Owners, SSO and EK, the previous Landlord's Attorney, LL, the translator and advocate for the Attorney, JL and CW respectively, attended the hearing at the appointed date and time. YH, representing his family, 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 Landlords’ served the first 10 Day Notice on the Tenants on November 12, 2021 by placing the document in their mailbox and by posting the notice on the door. Posting of the first 10 Day Notice was witnessed by the Attorney’s translator, JL. The Tenants confirmed receipt of the first 10 Day Notice on November 12, 2021. I find that the first 10 Day Notice was served on the Tenants on November 12, 2021 pursuant to Sections 88(f) and 88(g) of the Act.

The Landlords served the second 10 Day Notice on the Tenants on December 6, 2021 by leaving a copy in a mailbox/mail slot at the residential address. Leaving a copy of the second 10 Day Notice was witnessed by the Attorney’s translator, JL. The Tenants confirmed receipt of the second 10 Day Notice. I find that the second 10 Day Notice was deemed served on the Tenants on December 9, 2021 pursuant to Sections 88(g) and 90(c) of the Act.

The Tenants applied for dispute resolution after receiving the first 10 Day Notice on November 16, 2021. The Tenants stated they served the Notice of Dispute Resolution Proceeding package to the Landlord via Canada Post registered mail (the “NoDRP package”). YH did not provide Canada Post registered mail tracking numbers as proof of service. The Landlords testified that they did not receive anything from the Tenants indicating they applied for dispute resolution. I find that the Tenants did not serve the Landlords with their NoDRP package via Canada Post registered mail. Due to lack of service, all the Tenants’ claims in their application are dismissed without leave to re-apply.

The Landlords, SSO and EK, served their Notice of Dispute Resolution Proceeding package to the Tenants via Canada Post registered mail on December 30, 2021 (the “NoDRP packages-OP/MN”). The Landlords 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 Tenants confirmed receipt of all the NoDRP packages-OP/MN. I find that the Tenants were deemed served with the NoDRP

packages-OP/MN five days after mailing them, on January 4, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matters

Parties' Names

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenants' application, the Tenants named the Landlord, using the property management company's name and the Landlord's Attorney's name. In the hearing, it was determined that the residential property was sold, and the new Landlords' names are as listed in the cross application. As the property has new owners, the advocate advised that the property has changed hands, accordingly the name listed for the respondent in the Tenants' application is rightly named as the new Owners' names, the Landlords on the cross application. I have corrected the Landlords' names in the primary application and this change is reflected 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 Landlords are properly named as the new Landlords' names and not the previous Landlord's Attorney's name or property management company name.

Monetary Amount Owing

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 Landlords' testimony to amend their original application from \$3,100.00 to \$6,200.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for Unpaid Rent?

2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords 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 November 16, 2020. The fixed term tenancy ended on October 30, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,550.00 payable on the 30th day of each month for the following month. A security deposit of \$775.00 was collected at the start of the tenancy and is held by the new owners and Landlords of the residential property.

The reasons in the Landlords' 10 Day Notice why the Landlords were ending the tenancy was because the Tenants owed \$3,100.00 in outstanding rent. The effective date of the first 10 Day Notice was November 23, 2021. The effective date of the second 10 Day Notice was December 20, 2021.

The Tenants submitted that at the end of the fixed term tenancy, the Tenants did a company search and did not find the name of the property management company working for the previous Landlord. They determined this was an illegal company, that did not have a valid business name in BC. As they felt the rental company was fraudulent, they stopped paying rent.

The previous Landlord and the new Landlords agreed to a Residential Contract of Purchase and Sale of the residential property on December 11, 2021. This contract disclosed that the property had Tenants and that the previous Landlord had previously served a 10 Day Notice on the Tenants.

The previous Landlord's advocate stated that between the previous Landlord and the Tenants, there was a dispute over the Form K. The advocate thought the Tenants wanted a new contract, but in that dispute the Tenants stopped paying rent. The following months remain unpaid:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
October 30 (for November)	\$1,550.00	\$0.00	\$1,550.00
November 30 (for December)	\$1,550.00	\$0.00	\$3,100.00
December 30 (for January)	\$1,550.00	\$0.00	\$4,650.00
January 30 (for February)	\$1,550.00	\$0.00	\$6,200.00
TOTAL OUTSTANDING RENT:			\$6,200.00

The Landlords are seeking an Order of Possession and a Monetary Order for \$6,200.00.

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.

For the Tenants' 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. (emphasis mine)

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].*

- (3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*
- (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.*

...

When a rental property is sold, the tenancy will continue under the same terms. Some tenants and new landlords will enter into a new tenancy agreement; however, this is not a necessity as the new owner will just take over as the new landlord.

The previous Landlord's first 10 Day Notice was served on November 12, 2021. I find that the Landlord's 10 Day Notice complies with the form and content requirements of Section 52 of the Act. The Tenants had until November 17, 2021 to pay the overdue rent or apply for dispute resolution. The Tenants applied for dispute resolution for the first 10 Day Notice on November 16, 2021 within the 5 days after receiving the notice; however, I found that the Tenants did not serve their NoDRP package on the previous Landlord. I found due to lack of service, all the Tenants' claims in their application are dismissed without leave to re-apply.

The previous Landlord's second 10 Day Notice was deemed served on the Tenants on December 9, 2021. The Tenants had until December 14, 2021 to pay the outstanding rent or apply for dispute resolution. They did neither. I find pursuant to Section 46(5) of the Act that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and they must vacate the rental unit.

As the Tenants have failed in their application, I must consider if the Landlords are 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 first 10 Day Notice complies in form and content with Section 52 of the Act and I uphold the Landlords' first 10 Day Notice. The Tenants' application is dismissed without leave to re-apply. Pursuant to Section 55(1) of the Act, I grant an Order of Possession to the Landlords which will be effective two days after service on the Tenants.

As the Landlords have been successful, I find that the Landlords are entitled to recover the application filing fee paid to start their application. The Tenants owe outstanding rent to the Landlords in the amount of \$6,200.00. RTB Rules of Procedure 4.2 allows me to amend the Landlords' original application amount, and I do so in this decision. Pursuant to Section 55(1.1), I grant the Landlords a Monetary Order for payment of the unpaid rent. Pursuant to Section 72(2)(b) of the Act, the Landlords may deduct money owed from the deposits they hold. In accordance with Section 67 of the Act, I grant the Landlords a Monetary Order in the amount of \$5,525.00, which has been calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$6,200.00
Less security deposit:	-\$775.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$5,525.00

Conclusion

The Landlords' first 10 Day Notice is upheld, and I grant an Order of Possession to the Landlords effective two (2) days after service on the Tenants. The Landlords 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 the Landlords a Monetary Order in the amount of \$5,525.00, and 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: March 07, 2022

Residential Tenancy Branch