



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willingdon Care Centre Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, RP, LRE, OLC**

Introduction

This 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 for repairs to the unit, I have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 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; and,
4. 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's Agent, LB, and the Tenant, JB, 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 the Tenant on November 16, 2021. The Tenant confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenant on November 16, 2021 pursuant to Section 88(a) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 18, 2021 by Canada Post registered mail (the “NoDRP package”). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing, on November 23, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matters

Unrelated Claims

Prior to the parties’ testifying, I advised them 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 at this proceeding. The Tenant’s other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

Amend Monetary Amount

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. The Landlord testified that rent has been outstanding up to February 2022. On this basis, I accept the Landlord’s submissions and I amend his original application amount from \$2,775.00 to \$8,325.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

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 in November 2020. Monthly rent is \$1,850.00 payable on the first day of each month. A security deposit of \$925.00 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 \$2,775.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 26, 2021.

The Landlord said he did not believe he has received any rent starting from September 2021. The Tenant testified that she paid August and September in full by cheques. She said she paid half a month's rent for October 2021. The Landlord's 10 Day Notice states that the overdue rent on November 1, 2021 was \$2,775.00 which is equal to receiving only half a month's rent in October and nothing in November. The outstanding rent is as follows:

RENTAL MONTHS	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
September 2021	\$1,850.00	\$1,850.00	\$0.00
October 2021	\$1,850.00	\$925.00	\$925.00
November 2021	\$1,850.00	\$0.00	\$2,775.00
December 2021	\$1,850.00	\$0.00	\$4,625.00
January 2022	\$1,850.00	\$0.00	\$6,475.00
February 2022	\$1,850.00	\$0.00	\$8,325.00
TOTAL OUTSTANDING RENT:			\$8,325.00

The Landlord is seeking a Monetary Order in the amount \$8,325.00 for the outstanding rent, and an Order of Possession.

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 sets out the rules about paying rent, it states:

Rules about payment and non-payment of rent

- 26** (1) *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:

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.

After receiving the 10 Day Notice, the Tenant had five days to pay the outstanding rent amount, but she did not do this. The Tenant applied for dispute resolution on November 18, 2021 within 5 days after receiving the 10 Day Notice. I find that the Tenant's dispute

resolution application does not establish any legal rulings or permissions from the Landlord to withhold rent. 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:

Order of possession for the landlord

- 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 to the landlord an order of possession of the rental unit if*
- (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 \$8,325.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. The 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. Pursuant to Section 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$8,325.00
Less security deposit:	-\$925.00
TOTAL OWING:	\$7,400.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. 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 \$7,400.00. 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: March 08, 2022

Residential Tenancy Branch