



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kerr Properties 002 Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT, LRE, 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 more time to dispute the notice pursuant to Section 66 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 Property Manager, ND, 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 ND that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. ND testified that she was not recording this dispute resolution hearing.

The Landlord personally served the 10 Day Notice on the Tenants on November 10, 2021 and provided proof of service of that document. I find that the 10 Day Notice was served on the Tenants on November 10, 2021 pursuant to Section 88(a) of the Act.

ND confirmed that the Landlord was personally served with the Notice of Dispute Resolution Proceeding package for this hearing in January 2022 (the “NoDRP package”). ND confirmed that she received the NoDRP package from another adult who was residing in the rental unit. ND said there was no evidence in the NoDRP package from the Tenant but rather an odd document with pet information. I find that the Landlord was served with the NoDRP package for this hearing in January 2022 in accordance with Section 89(1)(a) of the Act.

Preliminary Matters

Respondent 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 Tenants’ application, the Tenants named the Landlord as an individual name and by the Property Management company’s name. In the hearing, the Property Manager provided that the business name of the Landlord should be as stated in the tenancy agreement. I asked the Property Manager if I had their agreement to amend the Landlord’s party name in the application. She 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 Property Management company name. I amended the Landlord’s name and it is reflected in 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. 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 \$3,050.00 to \$6,100.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to a Monetary Order for unpaid rent?
3. Are the Tenants entitled to an Order for more time to dispute the 10 Day Notice?
4. Are the Tenants entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?
5. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations and tenancy agreement?

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 \$1,500.00 plus \$25.00 per month for parking payable on the first day of each month. A security deposit of \$750.00, and a pet damage deposit of \$750.00 were collected at the start of the tenancy and are 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 \$3,050.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 20, 2021.

ND testified that the Tenants have not paid rent for the months of October 2021, November 2021, December 2021 and January 2022. The total amount owing presently is \$6,100.00.

The Tenants moved out of the rental unit sometime in January 2022, and left the keys with an Aunt. The Aunt let people stay in the rental unit, the Landlord's Property Manager described them as squatters. Now the rental unit is empty. The Landlord's

Property Manager said she is not seeking an Order of Possession, but she is seeking a Monetary Order for \$6,100.00 for the 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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

For the Tenants' 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.*
- (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. Pursuant to Section 26(1) of the Act, 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.

After receiving the 10 Day Notice, which I found served on November 10, 2021, the Tenants had five days to pay the outstanding rent or apply for dispute resolution. The Tenants applied for dispute resolution on December 31, 2021 which is beyond the 5 days after receiving the 10 Day Notice. Based on ND's undisputed testimony, and the Tenants' failure to attend this hearing and present evidence relating to their application, I find that the Tenants did not pay rent for the months of October, November, December 2021, and January 2022. I find pursuant to Section 46(5)(a) of the Act, that the Tenants are conclusively presumed to have accepted that the tenancy has ended and I order that the Tenants' application for dispute resolution to cancel the 10 Day Notice is dismissed without leave to re-apply.

Further due to the Tenants' failure to attend this hearing and provide evidence, and also because the Tenants have vacated the residential property, all their dispute resolution application claims are dismissed without leave to re-apply.

As the Tenants failed in their application, I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. Section 55(1.1) of the Act reads as follows:

- 55** (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 previously found that the 10 Day Notice submitted into documentary evidence complies with Section 52 of the Act. Based on the undisputed evidence of the Landlord, I uphold the Landlord's 10 Day Notice and pursuant to Section 55(1.1) of the Act, I grant the Landlord a Monetary Award for the unpaid rent. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. 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. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$6,100.00
Less security and pet damage deposits:	\$1,500.00
TOTAL OWING:	\$4,600.00

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to them to properly serve the Monetary Order and collect on it. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$4,600.00. 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 17, 2022

Residential Tenancy Branch