



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: **CNR**

Landlord: **OPR-DR, MNR-DR, FFL**

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.

This hearing also dealt with the Landlord's cross-application pursuant to the Act for:

1. An Order of Possession for the 10 Day Notice pursuant to Sections 46 and 55 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's Property Manager, TM, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant 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's Property Manager and I were the only ones who had called into this teleconference. The Landlord's Property Manager was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Property Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution

hearings. The Landlord's Property Manager testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on January 13, 2022 by posting the notice on the Tenant's door. The Tenant applied for dispute resolution on January 17, 2022. I find the 10 Day Notice was deemed served on the Tenant on January 16, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord's Property Manager testified that the Tenant did not serve the Landlord with the Tenant's Notice of Dispute Resolution Proceeding package (the "NoDRP package") for this hearing although it was emailed to the Tenant on January 27, 2022. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- (a) *by leaving a copy with the person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) *if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) *as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (f) *by any other means of service provided for in the regulations.*

As the Tenant did not serve the Landlord at all with the NoDRP package or his evidence, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA

396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenant's application against the Landlord. I dismiss his claims without leave to re-apply.

The Landlord's Property Manager testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on February 9, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord's Property Manager 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 Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them, on February 14, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matters

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 Property Manager personally as the respondent in his application. In the hearing, the Property Manager explained that the Agent for the owner is the proper name for the respondent in this matter as is listed in the tenancy agreement and was listed in the Landlord's application. I asked the Landlord's 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 business name for the Agent for the owner and not the Property Manager's personal name. I amended the Landlord's name and it is reflected in this decision.

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 Property Manager's evidence about outstanding rent and request to amend their original application from \$2,500.00 to \$6,400.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord 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 Landlord's Property Manager confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term is to end on June 30, 2022, then the tenancy would have continued on a month-to-month basis. Monthly rent is \$1,275.00 plus \$25.00 for parking payable on the first day of each month. A security deposit of \$637.50 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,500.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 23, 2022.

The Landlord's Property Manager testified that the Tenant has been late paying rent or has not paid rent at all during his tenancy. The Landlord's Property Manager provided the following material from their Tenant Ledger:

RENT	Rent and Parking Owing	Rent/Partial Amount Paid	O/S Rent Total
July 6, 2021		\$1,275.00	-\$1,275.00
August 2021	\$1,300.00		\$25.00
August 10, 2021		\$1,300.00	-\$1,275.00
September 2021	\$1,300.00		\$25.00
September 23, 2021		\$1,300.00	-\$1,275.00
October 2021	\$1,300.00		\$25.00
November 2021	\$1,300.00		\$1,325.00
November 30, 2021		\$800.00	\$525.00
December 2021	\$1,300.00		\$1,825.00
December 13, 2021		\$625.00	\$1,200.00
January 2022	\$1,300.00		\$2,500.00
February 2022	\$1,300.00		\$3,800.00
March 2022	\$1,300.00		\$5,100.00
April 2022	\$1,300.00		\$6,400.00

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$6,400.00.

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's 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.

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 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.*
- ...

The Tenant was deemed served with the 10 Day Notice on January 16, 2022. I find that the 10 Day Notice complies in form and content pursuant to Section 52 of the Act. The Tenant applied for dispute resolution on January 17, 2022 which was within 5 days after receiving the 10 Day Notice. Service of the Tenant's NoDRP package was not effected and I found that the Tenant's application for dispute resolution is dismissed without leave to re-apply.

As the Tenant's application failed, I must consider if the Landlord is entitled to an Order of Possession. Section 55 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.*

I uphold the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant. The Landlord is also entitled to a Monetary Order to recover the outstanding rent pursuant to Section 55(1.1) of the Act. The total outstanding rent is \$6,400.00. 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 held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$6,400.00
Less security deposit:	-\$637.50
Plus application filing fee	\$100.00
TOTAL OWING:	\$5,862.50

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 \$5,862.50. 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: April 14, 2022

Residential Tenancy Branch