



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fibro Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenants: **CNR, RP**
Landlord: **MNR-DR, OPR-DR, FFL**

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; and,
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.

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

1. An Order of Possession for the 10 Day Notice 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 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 (the "RTB") 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 10 Day Notice on January 6, 2022 and provided Proof of Service #RTB-34 for that notice. I find that the 10 Day Notice was served on the Tenants on January 6, 2022 pursuant to Section 88(a) of the Act.

The Tenants applied for dispute resolution on January 10, 2022, but they did not serve their Notice of Dispute Resolution Proceeding package on the Landlord. 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 (e.g.: by email).

As the Tenants did not serve the Landlord at all with the NoDRP package or their 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 Tenants' application against the Landlord. I dismiss all of the Tenants' claims without leave to re-apply.

The Landlord testified that he personally served the Tenants with the Notice of Dispute Resolution Proceeding package-OP/MN for this hearing on January 21, 2022 (the "NoDRP package-OP/MN"). The Landlord's brother witnessed the service of the NoDRP package-OP/MN in the lobby of the building. I find that the Tenants were served with the NoDRP package-OP/MN on January 21, 2022, in accordance with Section 89(2)(a) of the Act.

Preliminary Matter

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 \$1,000.00 to \$2,000.00 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 testified that this periodic tenancy began on March 1, 2021. Monthly rent is \$1,015.00 payable on the first day of each month. The current Landlord took over the

building on January 4, 2022, but the previous landlord did not transfer any security deposit to him. The Landlord is not holding any deposits for these Tenants.

The reason in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$1,000.00 in unpaid rent on January 1, 2022. The effective date of the 10 Day Notice was January 16, 2022.

The Landlord testified that the Tenants paid January's rent on the 21st of January, and he issued them a receipt for use and occupancy only. The Landlord did not receive rent in the month of February or March, 2022. Sometime in March the Tenants vacated the rental unit, and the Landlord re-rented the unit on April 1, 2022.

The Landlord is no longer seeking an Order of Possession as the Tenants have vacated the rental unit, but the Landlord is seeking a Monetary Order for unpaid rent in the amount of \$2,000.00.

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 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.*

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].*
- ...
- (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 which states:

Form and content of notice to end tenancy

- 52** *In order to be effective, a notice to end a tenancy must in writing and must*
- (a) *be signed and dated by the landlord or tenant giving the notice,*
- (b) *give the address of the rental unit,*
- (c) *state the effective date of the notice,*
- (d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) *for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) *when given by a landlord, be in the approved form.*

I previously found that service of the Tenants' NoDRP package was not effected. The Tenants did not attend this hearing to give evidence about the outstanding rent amount

although provided notice of this hearing date. Pursuant to Section 46(5)(a), I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date which was January 16, 2022. I dismissed the Tenants' application to cancel the Landlord's 10 Day Notice without leave to re-apply.

As the Tenants' application was unsuccessful, I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. 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 have upheld the Landlord's 10 Day Notice and I find the Landlord is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$2,000.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. 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:	\$2,000.00
Plus application filing fee:	\$ 100.00
TOTAL OWING:	\$2,100.00

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$2,100.00. 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: April 22, 2022

Residential Tenancy Branch