



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenant:    **FFT, CNR, MNDCT**  
                                 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;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to 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's Agent, LM, 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 Agent and I were the only ones who had called into this teleconference. The Landlord's Agent was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agent that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agent testified that he was not recording this dispute resolution hearing.

The Landlord's Agent served the 10 Day Notice on the Tenant on February 2, 2022 by placing the document in his mailbox. The Landlord's Agent also testified that he served the 10 Day Notice by email to the Tenant. The Landlord's Agent provided a Proof of Service #RTB-34 form attesting to this service. The Tenant applied for dispute resolution on February 4, 2022, but did not attend the hearing. I find that the 10 Day Notice was deemed served on the Tenant on February 5, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Landlord's Agent stated he never received the Tenant's Notice of Dispute Resolution Proceeding package. The Landlord's Agent testified that the Tenant emailed him and told him that he was disputing the notice. 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 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 all of the Tenant's claims without leave to re-apply.

The Landlord's Agent confirmed that he personally served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on March 4, 2022 (the "NoDRP package-OP/MN"). The Landlord's Agent also testified that he served the NoDRP package-OP/MN by email to the Tenant. I find that the Tenant was deemed served with the NoDRP package-OP/MN on March 7, 2022, in accordance with Section 89(1)(f) of the Act and Section 44 of the *Residential Tenancy Regulation*.

### 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 \$2,500.00 to \$5,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

At the outset of the hearing, the Landlord's Agent advised that the Tenant vacated the rental unit around April 7 or 8, 2022, and he no longer requires an Order of Possession.

### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
2. 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 Agent confirmed that this periodic tenancy began on January 1, 2022. Monthly rent is \$2,500.00 payable on the first day of each month. A security deposit of \$1,250.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,500.00 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 12, 2022.

The Landlord's Agent testified that the Tenant did not pay February 2022 or March 2022's rent. The Landlord's Agent said the Tenant just vacated the rental unit, and he discovered this in April 2022. The Landlord stated he no longer requires an Order of Possession, but he needs a Monetary Order for unpaid rent in the amount of \$5,000.00.

## 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 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 Landlord's 10 Day Notice was deemed served on February 5, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on February 4, 2022, but neither served the Landlord with his NoDRP package nor attended the hearing to provide evidence. Due to lack of service, I dismissed the Tenant's dispute resolution application without leave to re-apply. The Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was February 12, 2022. The Landlord's 10 Day Notice is upheld.

I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. Section 55 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 have upheld the Landlord's 10 Day Notice and if the Tenant still resided in the rental unit, the Landlord would be granted an Order of Possession. As the Tenant has vacated the rental unit, an Order of Possession is no longer required; however, the Landlord is also 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 \$5,000.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. 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:	\$5,000.00
Less security deposit:	-\$1,250.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$3,850.00

#### Conclusion

I grant a Monetary Order to the Landlord in the amount of \$3,850.00. 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: May 10, 2022

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Residential Tenancy Branch