



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: **CNR, RP, RR, LRE, CNL,
RPP, MNRT, OLC, 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. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
3. 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;
4. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act;
5. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
6. An Order for the Landlord to return my personal property pursuant to Sections 65 and 67 of the Act;
7. An Order to be paid back for the cost of emergency repairs that I made during the tenancy pursuant to Section 67 of the Act;
8. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
9. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) 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, 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, NY, Landlord's Legal Counsel, DE, and the Tenant, LP, 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 served the Tenant with the 10 Day Notice on January 19, 2022 by posting the 10 Day Notice on the Tenant's door. The Tenant's dispute application states the 10 Day Notice was received on January 22, 2022. The Tenant confirms receipt of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on January 22, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package and her Amendments for this hearing by using a permitted email address for service purposes (the "NoDRP package"). The Tenant stated she also served the NoDRP package and Amendments in a downstairs unit mailbox. The Landlord confirmed that the Tenant is permitted to serve legal documents by email. The Landlord testified that she never received the Tenant's NoDRP package or Amendments by email or in the downstairs unit mailbox. The Landlord called the RTB and was notified that the Tenant had disputed her 10 Day 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).*

The Tenant stated she served the NoDRP package by email, but did not upload proof of that email with all attachments as being sent to the Landlord. The Landlord testified she never received an email with the NoDRP package. The Tenant stated she also served the NoDRP package by placing it in a downstairs unit mailbox; however, this is not a valid way to serve the NoDRP package.

As the Tenant did not serve the Landlord at all with the NoDRP package or her evidence and Amendments, 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 related to the possession of the unit without leave to re-apply. The Tenant's claims for an Order for compensation for a monetary loss is dismissed with leave to re-apply.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package on March 3, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord uploaded 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. The Tenant

confirmed receipt. I find that the Tenant was deemed served with the NoDRP package-OP/MN on March 8, 2022 in accordance with Sections 89(1)(c) and 90(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 \$2,000.00 to \$12,000.00 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 parties confirmed that this tenancy began as a fixed term tenancy on April 1, 2021. The fixed term ended on October 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,000.00 plus utilities payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,000.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was January 29, 2022.

The Landlord stated that the Tenant stopped paying rent in November 2021. The Landlord testified that the Tenant has not paid any rent since that time.

The Tenant said she was injured and was unable to make the rent payments.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$12,000.00.

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. 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.

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 January 22, 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 January 24, 2022 which was within five days after receiving the 10 Day Notice. The Tenant's service of the NoDRP package was not effected and I dismissed all her claims related to the possession of the unit without leave to re-apply, this includes her claim to cancel the Landlord's 10 Day Notice. The Tenant has not paid rent since November 2021 and she is arrears on these payments. The Tenant provided no evidence that she has a right under the Act to deduct all or a portion of the rent owing to the Landlord. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession and 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 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 amount pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$12,000.00. 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 and pet damage deposits held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claim, I grant her 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:	\$12,000.00
Less security deposit:	-\$ 500.00
Less pet damage deposit:	-\$ 500.00
Plus application filing fee:	\$ 100.00
TOTAL OWING:	\$11,100.00

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 \$11,100.00. 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 09, 2022

Residential Tenancy Branch