



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR, RR, RP, PSF**

### **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 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;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
4. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord, PKB, and the Tenant, SP, 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 10 Day Notice on the Tenant on February 10, 2022 by placing the document in her mailbox. The Tenant confirmed receipt of the 10 Day Notice on February 12, 2022. I find that the 10 Day Notice was served on the Tenant on February 12, 2022 pursuant to Section 88(f) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord by leaving the package in the mailbox at the Landlord's residence on February 17, 2022 (the "NoDRP package"). I note the RTB's February 17, 2022 email to the Tenant stated the NoDRP package can be served by Canada Post registered mail, in person, or by email (if the Landlord provided their consent to receive legal documents this way). The Tenant stated the RTB notified her that this was a permitted way to serve the NoDRP package. 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 in a permitted fashion for the NoDRP package, principles of natural justice were breached; however, the Landlord did confirm receipt of the NoDRP package. I find that the NoDRP package was sufficiently served on February 20, 2022 pursuant to Sections 71(2) and 90(d) of the Act.

Neither party served their evidence on the other party for this hearing. Due to this non-service of evidence, I decline to consider the evidence for either party that was uploaded on the RTB website for this matter.

## Preliminary Matter

### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on her application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the 10 Day Notice at this proceeding. The Tenant's other claims are dismissed without leave to re-apply.

### *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 \$4,650.00 to \$9,300.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

## Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

## 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 June 1, 2020. The fixed term ended on June 30, 2020, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,550.00 plus 50% of the utility bills payable on the fifth

day of each month. A security deposit of \$850.00 was collected at the start of the tenancy, but in the first month of tenancy, the Tenant was short \$850.00 for rent, and the Landlord allowed the security deposit to be used to cover the rent. After that period of time, the Tenant never re-paid her security deposit.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$4,650.00 in outstanding rent on February 5, 2022. The effective date of the 10 Day Notice was February 20, 2022.

The Tenant stated she does not have authorization to withhold paying rent. She testified that the Landlord has refused to take payment from her for rent. She said the Landlord just wants her to move out. The Tenant said she has been searching for alternative housing for her and her family.

The Landlord testified that the Tenant has been habitually late paying the rent during the tenancy. Starting in December 2021, the Tenant stopped paying any rent, and has not paid rent for the last six months. The Landlord said she never would not take rent from the Tenant, '*why would I do this?*' She said there is no reason for her to do this, she needs the money for her mortgage payments and her utility payments. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$9,300.00

### 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 served on February 12, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on February 11, 2022 which was within 5 days after receiving the 10 Day Notice. I note this date discrepancy with the Tenant's evidence of when she received the 10 Day Notice. The Landlord testified that the Tenants have not paid any rent since December 2021. The Tenants gave no evidence that they had permission or authority to deduct all or a portion of the rent. I find that the Tenants have a significantly high unpaid rent amount, and she is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice. The Landlord is entitled to have their 10 Day Notice upheld. I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order. 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 \$9,300.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. I grant the Landlord a Monetary Award in the amount of \$9,300.00.

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 \$9,300.00. 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 20, 2022

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Residential Tenancy Branch