



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR-MT**

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. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord, GP, Landlord's Agent, GC, and the Tenants, SB and SY, 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 Tenants on January 22, 2022 by placing the document in their mailbox. The Tenants confirmed receipt of the 10 Day Notice but they do not remember the day. I find that the 10 Day Notice was deemed served on the Tenants on January 25, 2022 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenants applied for dispute resolution on January 28, 2022. The Tenants did not serve the Notice of Dispute Resolution Proceeding package for this hearing on the Landlord (the "NoDRP package"). The Landlord contacted the RTB to enquire whether the Tenants had disputed her 10 Day Notice which was confirmed. On February 17,

2022, a courtesy copy of the NoDRP package was emailed to the Landlord by the RTB. The Landlord's Agent confirmed that the Landlord accepted service of the NoDRP package initiated by the Tenants. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on February 17, 2022 in accordance with Section 71(2) 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 testimony that the outstanding rent amount is higher now than when the Landlord first served the 10 Day Notice. I amend the Landlord's original notice amount from \$2,700.00 to \$16,200.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Are the Tenants entitled to more time to dispute the notice?

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 October 2, 2021. The fixed term was to end on September 30, 2022, then the tenancy would have continued on a month-to-month basis. Monthly rent is \$2,700.00 payable on the first day of each month. A security deposit of \$1,350.00 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 Tenants owed \$2,700.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was February 2, 2022.

The Tenants testified that due to personal loss and restrictions because of COVID-19, they have not been able to make their rent payments. The Tenants also submit that they are waiting for inheritance money, but this has not come through yet. They are hoping the Landlord can show some leniency.

The Landlord's Agent submitted that the Tenants' rent has been outstanding since December 2021. The Landlord is seeking an immediate Order of Possession and a Monetary Order for unpaid rent in the amount of \$16,200.00.

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.*

...

The Landlord's 10 Day Notice was deemed served on January 25, 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 January 28, 2022 which was within 5 days after receiving the 10 Day Notice. I find the Tenants did not need more time to apply for dispute resolution. 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 the Landlord is entitled to have their 10 Day Notice upheld. I dismiss the Tenants' 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 Tenants. 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 \$16,200.00. 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. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$16,200.00
Less security deposit:	- \$1,350.00
TOTAL OWING:	\$14,850.00

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants 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 \$14,850.00. 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: May 03, 2022

Residential Tenancy Branch