



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR-MT, OLC**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlords' 10 Day Notice for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. An Order for the Landlords to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlords, SYR and EJ, Owner, SY, and the Tenant, CB, 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 Landlords personally served the Tenant the 10 Day Notice on February 1, 2022. The Tenant confirmed receipt of the 10 Day Notice. I find that the 10 Day Notice was served on the Tenant on February 1, 2022, pursuant to Section 88(a) of the Act.

The Tenant applied for dispute resolution on February 7, 2022 but did not serve the Notice of Dispute Resolution Proceeding on the Landlords (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 Landlords at all with the NoDRP package or her 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 Landlords. I dismiss all of the Tenant's claims without leave to re-apply.

The Landlords were notified that the Tenant applied for dispute resolution on Facebook messenger. The Landlords contacted the RTB for a courtesy copy of the NoDRP package and the Tenant's evidence. They did not receive a copy of the Tenant's evidence.

The Landlords served the Tenant with their first evidence package via registered mail on May 2, 2022. The Landlords referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlords' first evidence

package. I find that the Landlords' first evidence package was deemed served on the Tenant on May 7, 2022, pursuant to Sections 88(c) and 90(a) of the Act.

The Landlords served the Tenant with their second evidence package via registered mail on May 4, 2022. The Landlords referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant did not confirm receipt of the Landlords' second evidence package; although, Canada Post left a notice card indicating where and when to pick up the item. I find that the Landlords' second evidence package was deemed served on the Tenant on May 9, 2022, pursuant to Sections 88(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 \$200.00 to \$600.00 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 Landlords' 10 Day Notice?
2. If the Tenant is unsuccessful, are the Landlords entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

### 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 February 15, 2021. The fixed term ended on August 15, 2021, and continued as a month-to-month tenancy. Monthly rent is \$100.00 payable on the 15th day of each month. No security deposit or pet damage deposit were collected at the start of the tenancy.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$200.00 in outstanding rent on January 20, 2022. The effective date of the 10 Day Notice was February 11, 2022.

The Landlords testified that the last time they received rent for the rental unit was November 18, 2021. Rent for the unit is significantly below the current market value and was provided to assist the Tenant's financial situation. Rent is still owing for December 2021, and January to May 2022 for a total of \$600.00. The Landlords are seeking an Order of Possession and a Monetary Order for unpaid rent.

The Tenant does not disagree with the Landlords about the outstanding rent amount, but she noted they had a verbal agreement to change the due date of rent to the 20<sup>th</sup> of the month which coincided with when she received her child benefits. The Tenant confirmed that she did not have authorization to withhold rent from the Landlords, and she confirmed that the Landlords had not consented to her withholding rent. The Tenant stated she felt they were working on an agreement towards resolution of the unpaid rent amount.

### 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.

For the Tenant's benefit, 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 Landlords' 10 Day Notice was personally served on the Tenant on February 1, 2022. I find that the Landlords' 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on February 7, 2022, one day beyond the five days after receiving the 10 Day Notice. The Tenant sought an extension of time to apply for dispute resolution. I find, whether there was agreement or not to allow for an extension of time for the Tenant to apply for dispute resolution, I find on a balance of probabilities that the Tenant did not have authorization from an arbitrator to withhold rent, and the Landlords had not provided consent for the Tenant to withhold rent. Further, the Tenant did not serve the Landlords with the NoDRP package, and I previously dismissed the Tenant's application to cancel the Landlords' 10 Day Notice and her application seeking an Order for the Landlords to comply with the Act, regulation, and tenancy agreement 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 11, 2022.

I must consider if the Landlords are 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 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 previously found that the Landlords' 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Additionally, I have upheld the Landlords' 10 Day Notice. I find the Landlords are 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 Landlords are 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 \$600.00. RTB Rules of Procedure 4.2 allows me to amend the Landlords' original application amount, and I do so in this decision. I grant the Landlords' a Monetary Award in the amount of \$600.00.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

The Landlords are granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlords 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 Landlords in the amount of \$600.00. 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 16, 2022

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Residential Tenancy Branch