



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: **CNR**
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.

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's Associate Property Manager, MV, hereinafter called the 'Landlord', and the Tenant, ED, Advocate, TB, and Support, GS, 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.

At the outset of the hearing, the Tenant's Advocate stated that the Tenant's father died on December 23, 2021. The Landlord's cross application named both Tenants as this reflected the party listed in the tenancy agreement. The Tenant's application only named Tenant EC. The Tenant did not provide a name as a personal representative or executor for his father's estate.

The Landlord served the Tenant with the 10 Day Notice on January 18, 2022, by posting the notice on the Tenant's door. The Tenant confirms receipt of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on January 21, 2022, according to Sections 88(g) and 90(c) of the Act.

The Tenant's Advocate testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package on January 26, 2022, by Canada Post registered mail (the "NoDRP package"). The Advocate referred me to 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 Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on January 31, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on February 15, 2022, by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord referred me to 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. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on February 20, 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 testimony about the increased rent amount owing and I amend their original application from \$1,612.76 to \$2,372.23 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

2. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
4. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
5. 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 December 1, 2019. The fixed term ended on November 30, 2020, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,776.25 payable on the first day of each month. A security deposit of \$875.00 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 \$1,612.76 in outstanding rent plus parking and late fees on January 1, 2022. The effective date of the 10 Day Notice was January 31, 2022.

The Advocate testified that the Tenant has fallen on hard times. His father died in December 2021, and he was his father's main caregiver at the end of his life. The Tenant is suffering from depression. The Tenant was a productive member of his community and will once again be that productive person when he secures employment. The Advocate and mother both stated he is working on his mental health, and with medication, it is improving. The Tenant's mother and support person states she has been assisting her son. She recently secured a parttime job, and she testified to having a lucrative movie industry job at the end of May. The Advocate has been assisting the family get caught up in filing their income taxes and determining if there are survivor benefits for the Tenant.

The Landlord testified that as of April 13, 2022, the Tenant's outstanding rent amount was \$2,372.23. The Tenant's mother had brought in \$2,000.00, but an outstanding rent amount is still owing. The Landlord is not open to providing this family with more time to get caught up with their rent payments. The Landlord is seeking an Order of Possession and a Monetary Order for the \$2,372.23.

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 Tenant was deemed served with the 10 Day Notice on January 21, 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 26, 2022, within the five days after receiving the 10 Day Notice. The Tenant and his mother have made attempts to get caught up on the outstanding rent situation with the Landlord but have been unsuccessful. The Tenant does not have a right under the Act to deduct all or a portion of the rent, and the Landlord is not in agreement to providing more time to the Tenant. I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was January 31, 2022. I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice without leave to re-apply. I uphold the Landlord's 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:

- 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 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 \$2,372.23. 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:	\$2,372.23
Less security deposit:	-\$875.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$1,597.23

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 \$1,597.23. 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 11, 2022

Residential Tenancy Branch