



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HORIZON TOWERS HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, FFL**

Introduction

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Resident Manager, NW, and Tenant, RB, and Attorney for Tenant BM, CM, 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 testified that they personally served Tenant BM with the 10 Day Notice on January 7, 2022. The Landlord uploaded a Proof of Service #RTB-34 form signed by Tenant BM as evidence of service of the 10 Day Notice. I find that Tenant BM was served with the 10 Day Notice on January 7, 2022 pursuant to Section 88(a) of the Act.

The Landlord served Tenant BM's Attorney with the 10 Day Notice via registered mail on January 10, 2022. NW 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. I find that the 10 Day Notice was deemed served on Tenant BM's Attorney on January 15, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord testified that they served the Tenant BM with the Notice of Dispute Resolution Proceeding package on February 4, 2022 by Canada Post registered mail (the "NoDRP package"). NW 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 BM was deemed served with the NoDRP package five days after mailing them, on February 9, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served Tenant BM's Attorney with the Notice of Dispute Resolution Proceeding package on February 4, 2022 by Canada Post registered mail (the "NoDRP package"). NW 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 BM's Attorney was deemed served with the NoDRP package five days after mailing them, on February 9, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served Tenant RB with the Notice of Dispute Resolution Proceeding package on February 4, 2022 by Canada Post registered mail (the "NoDRP package"). NW 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 RB was deemed served with the NoDRP package five days after mailing them, on February 9, 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 \$8,000.00 to \$11,660.70 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 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 February 1, 2021. The fixed term ended on January 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,295.00 payable on the first day of each month. Tenant BM paid an additional \$40.00 for parking and \$30.00 for storage each month. A security deposit of \$1,147.50 was collected at the start of the tenancy and is still held by the Landlord. Tenant BM is still residing in the rental unit. Tenant RB vacated the unit on November 29, 2021, but had not provided the Landlord with written notice.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenants owed \$8,000.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 21, 2022.

The Landlord testified that they understood how RB's rent amount was \$1,147.50 per month, and BM's rent amount was \$1,217.50 per month. The Landlord stated that RB has not made a rent payment or has only made partial payments since May 2021. The Landlord stated that BM has always paid her portion of the rent on the first or second day of each month. The Landlord stated when RB vacated on November 29, 2021, she left no documentation, she did not take her name off the lease and she did not transfer the lease just to Tenant BM. When RB left, BM was alone.

RB gave evidence that she had asked for a copy of the resident ledger last summer, and she noticed that none of her payments were listed under her name. The Landlord said they just use the name of the first listed Tenant in their resident ledger. A review of the resident ledger shows regular payments of \$1,217.50 representing BM's rent

payments, and sporadic other payments of \$450.00, \$650.00, \$697.50 or \$730.00, the last four amounts representing rent payment amounts from Tenant RB.

RB said their lease was up at the end of January 2022, that BM accepted to stay on, and that she accepts no liability for outstanding rent after this time.

BM is in the process of moving out of the rental unit, but the Landlord is still seeking an Order of Possession and a Monetary Order for \$11,660.70.

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.

For the Tenants' benefit, Section 26(1) of the Act sets out the rules about paying rent, it states:

Rules about payment and non-payment of rent

- 26** (1) *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].*
- ...
- (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.*

I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Pursuant to Section 26(1) of the Act, the Tenants are required to pay rent when it is due whether or not the Landlord complies with this Act, the regulations or the tenancy agreement.

RTB Policy Guideline # 13-Rights and Responsibilities of Co-tenants clarifies the rights and responsibilities relating to situations where multiple tenants are renting one rental unit. The Guideline states that:

... co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.
(emphasis mine)

Neither Tenant applied for dispute resolution, therefore, I find, pursuant to Section 46(5)(a) of the Act, that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was January 21, 2022. In the hearing, it was agreed that Tenant BM consistently paid her portion of the rent on the first or second day of the month. Tenant RB, however, did not and this has resulted in an outstanding rent amount owing and the reason why the Landlord issued the 10 Day Notice.

This tenancy began as a fixed term tenancy which ended on January 31, 2022. At the end of November, 2021, Tenant RB left the rental unit, but did not provide the Landlord with a formal notice. A tenant may give notice to end a fixed term tenancy but that date cannot be earlier than the date specified in the tenancy agreement as the end of the fixed term tenancy. I find that Tenant RB remained as a co-tenant in this tenancy agreement as she did not provide formal notice that she was ending her fixed term tenancy, or when it changed to a month to month tenancy. The tenancy continued on a month to month basis at the end of the fixed term, and I find both Tenants are equally responsible for the outstanding rent amount. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession. Sections 55(2) and 55(4) of the Act read as follows:

Order of possession for the landlord

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

The Tenants did not apply for dispute resolution, and the time to apply has expired. I have upheld the Landlord's 10 Day Notice and I find the total outstanding rent is \$11,660.70. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. I find the Landlord is entitled to an

Order of Possession pursuant to Section 55(4)(a) of the Act and is entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(4)(b) of the Act. Further, 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. Having been successful, I Order that the Landlord is entitled to recover the application filing fee paid to start this application pursuant to Section 72(1) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$11,660.70
Less security deposit:	-\$1,147.50
Plus application filing fee:	\$100.00
TOTAL OWING:	\$10,613.20

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 \$10,613.20. 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 02, 2022

Residential Tenancy Branch