



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, 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;
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. One Tenant, RF, attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenants with the 10 Day Notice on November 2, 2021 by posting the 10 Day Notice on the Tenants' door. The Landlord uploaded a Proof of Service #RTB-34 form dated May 11, 2022 attesting to service of the 10 Day Notice. Tenant RF said they did not receive the 10 Day Notice. I find the 10 Day Notice was

deemed served on the Tenant on November 5, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenants with a One Month Notice on November 23, 2021 by posting the One Month Notice on the Tenants' door. The Landlord uploaded an unwitnessed Proof of Service #RTB-34 form dated November 23, 2021 attesting to service of the One Month Notice. Tenant RF said they did receive the One Month Notice but she was not certain of the date. I find the One Month Notice was deemed served on the Tenants on November 26, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Tenants with the Notice of Dispute Resolution Proceeding package for this hearing on January 17, 2022 by Canada Post registered mail (the "NoDRP package"). Tenant RF confirmed receipt of the Canada Post registered mail package containing the NoDRP package. I find that the Tenants were deemed served with the NoDRP package five days after mailing them, on January 22, 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 in their Notice of Dispute Resolution Proceeding package to amend their original application from \$2,000.00 to \$6,000.00 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 a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. 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.

Tenant RF confirmed that this tenancy began as a fixed term tenancy on July 6, 2021. The fixed term is to end on June 30, 2022, then the tenancy would continue on a month-to-month basis. Monthly rent is \$2,000.00 plus utilities payable on the first day of each month. A security deposit of \$1,000.00 was 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 \$2,000.00 in outstanding rent on November 1, 2021. The effective date of the 10 Day Notice was November 11, 2021.

The Tenant testified that they only paid \$1,000.00 towards rent in November 2021. They have not paid any rent since then.

The Tenant said they are moving out today. She was just waiting for a moving truck to arrive so they could pack up all their items.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$6,000.00.

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

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].*
- ...
- (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. The Tenants did not apply for dispute resolution; therefore, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was November 11, 2021. The Tenants were still residing in the rental unit as of today's date, but RF said once the truck comes, they will be moving all their items out of the rental unit. 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. The outstanding rent amount may be higher, but as the Landlord did not attend the hearing, I find the total outstanding rent is \$6,000.00 as noted in the Landlord's Notice of Dispute Resolution Proceeding package. 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 find the Landlord is entitled to recover the application filing fee paid to start this application. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$6,000.00
Less security deposit:	-\$1,000.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$5,100.00

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 \$5,100.00. 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 09, 2022

Residential Tenancy Branch