



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

**OPR-DR
OPC**

Introduction

This hearing dealt with the Landlords' 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. An Order of Possession for a One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 of the Act.

The hearing was conducted via teleconference. The Landlords, NB and BH, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlords served the Tenant with the December 10 Day Notice on December 12, 2021 by posting the notice on the Tenant's door. Landlord NB testified that she witnessed Landlord BH posting the 10 Day Notice on the Tenant's door. I find the

December 10 Day Notice was deemed served on the Tenant on December 15, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlords also served the Tenant with the One Month Notice on December 12, 2021 by posting the notice on the Tenant's door. Landlord NB testified that she witnessed Landlord BH posting the One Month Notice on the Tenant's door. I find the One Month Notice was deemed served on the Tenant on December 15, 2021 according to Sections 88(g) and 90(c) of the Act.

The Landlords served the Tenant with the January 10 Day Notice on January 5, 2022 by posting the notice on the Tenant's door. The Landlords uploaded a Proof of Service #RTB-34 form attesting to the service of the January 10 Day Notice. The Landlords testified that they inadvertently wrote the date as January 5, 2021, when it should have been written as January 5, 2022. I find the January 10 Day Notice was deemed served on the Tenant on January 8, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN and their evidence on February 28, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlords 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 March 5, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matter

The Landlords testified that the Tenant paid \$1,090.00 on December 13, 2021, the day after receiving the December 10 Day Notice. Section 46(4)(a) of the Act states within 5 days after receiving a 10 Day Notice, the tenant may pay the overdue rent, in which case the notice has no effect. I find that since the Tenant paid the outstanding rent amount within the 5 days after receiving the December 10 Day Notice, the notice has no effect, and I cancel the December 10 Day Notice.

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 Landlords' request to amend their original application from \$1,563.00 to \$3,339.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for the January 10 Day Notice?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords entitled to an Order of Possession for a One Month 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 Landlords confirmed that this periodic tenancy began on August 1, 2020. Monthly rent is \$1,563.00 payable on the first day of each month. A security deposit of \$770.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the January 10 Day Notice why the Landlords were ending the tenancy was because the Tenant owed \$1,563.00 in outstanding rent on January 1, 2022. The effective date of the 10 Day Notice was January 16, 2022.

After serving the January 10 Day Notice on the Tenant, the Landlords received two separate payments of \$1,625.00 and \$1,113.00 on February 2, 2022.

The Landlords testified that the Tenant is continuously late paying rent. The Landlords stated the Tenant was paid up to the end of March 2022, but has not paid rent for April, May or June 2022. The total outstanding rent is \$3,339.00.

The Landlords are seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$3,339.00.

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 Tenant's absence, therefore, all the Landlords' 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.*

For the Tenant's 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 Landlords' January 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 Tenant is required to pay rent when it is due whether or not the Landlords comply with this Act, the regulations or the tenancy agreement.

After receiving the January 10 Day Notice, the Tenant had five days to pay the outstanding rent or apply for dispute resolution. The Tenant did neither of these steps. I find pursuant to Section 46(5)(a) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the rental unit. I uphold the Landlords' January 10 Day Notice.

I must consider if the Landlords are entitled to an Order of Possession and a Monetary Order. 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 Tenant did not apply for dispute resolution, and the time to apply has expired. I have upheld the Landlords' January 10 Day Notice and, based on the undisputed testimony of the Landlords, I find the total outstanding rent is \$3,339.00. I find the Landlords are entitled to an Order of Possession pursuant to Section 55(4)(a) of the Act which will be effective two (2) days after service on the Tenant. I find the Landlords are 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 Landlords are authorized to retain the security deposit held by the Landlords in partial satisfaction of the monetary award. The Landlords' Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$3,339.00
Less security deposit:	\$770.00
TOTAL OWING:	\$2,569.00

I did not consider the merits of the Landlords' One Month Notice, and as the tenancy has ended based on the January 10 Day Notice, I cancel the Landlords' One Month Notice.

Conclusion

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 Supreme Court of British Columbia.

I grant a Monetary Order to the Landlords in the amount of \$2,569.00. 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: June 02, 2022

Residential Tenancy Branch