



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PATTONY INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

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

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;
2. More time to dispute the notice pursuant to Section 66 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
4. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, GK, and the Tenant, ECW, 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 served the Tenant with a 10 Day Notice on February 10, 2022 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the February 10 Day Notice and is found to have been served in accordance with Section 88 of the Act.

The Landlord served the Tenant with a second 10 Day Notice on March 24, 2022 by posting the notice on the Tenant's door. The Tenant confirms receipt of the March 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on March 27, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing; and although she could not remember the date, she had uploaded the Canada Post registered mail receipt which is dated March 4, 2022 (the "NoDRP package"). The Tenant 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 Landlord was deemed served with the NoDRP package five days after mailing them, on March 9, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served their evidence on the Tenant via Canada Post registered mail on May 13, 2022. GK 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 stated she picked up 'something' 2 days ago. I find that the Landlord's evidence was deemed served on the Tenant on May 18, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matters

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the March 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the 10 Day Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant's monetary claim is dismissed with leave to re-apply.

Opening Request

The parties in this matter were both quick to make comments about what the other party was saying. I had to remind both parties not to interrupt the other party while they were speaking. At several points, the Tenant continued to speak after being asked to stop, or after being reminded that it was the Landlord's Agent's turn to speak. I had to mute one party, which turned out to be the Tenant at one point as both parties were speaking at the same time and I could not hear what either party was saying. The Tenant said on several occasions that she did not remember things, or she could not participate in the hearing, although she was able to assert herself at certain points of the hearing when it was not requested or needed. The Tenant left the hearing before it concluded, and the Landlord's Agent and I finished by discussing items which this Arbitrator usually speaks to at the beginning of the hearing but could not as the Tenant kept interrupting.

At the outset of the hearing and prior to this Arbitrator being allowed to finish introductory comments, the Tenant stated she was seeking an adjournment of this matter. The Tenant testified that she has been very ill for two months, she has cognitive impairment, and she recently received a blood transfusion to bring her hemoglobin up. The Tenant testified that she paid the Landlord \$1,800.00 towards her rent arrears on the morning of the hearing day.

The Tenant uploaded a COVID-19 text message result on February 23, 2022 which states:

The COVID-19 result from 01/04/2022 for [redacted] is POSITIVE. You and the people you live with need to self-isolate now. Public health will contact you. If you are a health care worker, please notify your employer. Monitor your health and contact a health care provider or call 8-1-1 if you are concerned about your symp- ...

The Tenant also uploaded the following doctor's letter on May 31, 2022:

RE:[Tenant's name]
Phone:Home [telephone number]
Addr:[Address]

To whom it may concern

[Tenant] was seen at [name] Clinic on 30-May-2022 for medical reasons. Due to medical illness with secondary physical and cognitive impairments for the last eight weeks, [Tenant] has been unable to attend to activities of daily living, including preparing for an upcoming legal case. She is undergoing medical therapy and investigations and will require a three week extension.

Yours sincerely,

[Doctor's name]

The Tenant uploaded her own letter on April 1, 2022 which states about her health that "*I honestly thought I was going to die*". The letter also stated:

...

I'm still not functional today however I have faith when they bring up my hemoglobin level I will be able to prepare my evidence and carry through with my monetary claim case. I have so much evidence, video footage, numerous clients, friends, I just need the time to put it together. I am medically unable to do so right now. I would like to ask for three and a half weeks.

...

RTB's Rules of Procedure 1.1's objective for residential tenancy hearings is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. RTB Rules of Procedure 7.8 and 7.9 provide me the authority to adjourn hearing proceedings and read as follows:

7.8 Adjournment after the dispute resolution hearing begins: *At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.*

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment: *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The Landlord's Agent said they oppose this adjournment request. They served their first 10 Day Notice back on February 10, 2022, then a second 10 Day Notice on March 24, 2022. The Landlord argued the Tenant has had much time to dispute these Notices and the amount of outstanding rent is \$9,100.00. The Landlord's Agent said an adjournment poses an extreme prejudice to them. The Landlord's Agent called their Building Manager to inquire about the \$1,800.00 the Tenant stated she paid the morning of the hearing. The Building Manager checked for a payment from the Tenant, but did not find one.

The Tenant's COVID-19 text message result which she uploaded into documentary evidence has a redacted name. I find I cannot confirm that this COVID-19 result is for the Tenant. The Tenant has not uploaded any documents related to her monetary claim other than some brief letters stating she has a monetary claim for \$14,000.00 or \$8,000.00. At the start of this hearing, I told the parties that I was severing unrelated claims and would only deal with the Tenant's application to cancel the Landlord's 10 Day Notice as this was the most important claim to each party. The Tenant's non-payment of rent history has been protracted, and I agree with the Landlord by adjourning this part of this matter, I find that would extremely prejudice the Landlord and this significantly outweighs all other adjournment request considerations. The fact that the Landlord did not receive a rent payment from the Tenant on the morning of the hearing day as she testified she paid further blemishes her credibility. I declined the Tenant's adjournment request and the hearing continued with evidence about unpaid rent.

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 \$3,700.00 to \$9,100.00 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 a cancellation of the Landlord's March 10 Day Notice?
2. Is the Tenant entitled to more time to dispute the notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
4. Is the Tenant 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 Landlord confirmed that this tenancy began as a fixed term tenancy on March 1, 2019. The fixed term ended on February 28, 2020, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,800.00 payable on the first day of each month. A security deposit of \$900.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord issued two separate 10 Day Notices. The first dated February 10, 2022 and is for alleged unpaid rent of \$5,700.00. This notice was uploaded into documentary evidence and displays a 10 Day Notice that is unsigned by the Landlord.

The second 10 Day Notice dated, March 24, 2022 is for alleged unpaid rent of \$3,700.00.

The Tenant states she totally disagrees with the Landlord's rent ledger. The Tenant uploaded three receipts for rent payments, all three of which are noted on the Landlord's rent ledger and deducted from the outstanding rent amount accordingly. The Tenant noted on her Amendment form adding her dispute resolution application for the March 10 Day Notice that she would "add April 1st rent receipt to the file on Monday." She did not upload any additional rent receipts, and the Landlord stated their accounting department keeps good records and if they had received a payment, they would have recorded it.

The Landlord did not receive a rent payment in their office on the morning of the hearing as the Tenant stated she had paid, therefore the outstanding rent amount is still \$9,100.00. The Landlord seeks an Order of Possession and a Monetary Order for \$9,100.00.

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. 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.

This hearing was conducted partly pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, the Landlord's testimony after the Tenant left the call 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].*
- ...
- (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 Landlord served the Tenant with the February 10 Day Notice on February 10, 2022 by posting the notice on the Tenant's door. The Tenant confirms receipt of the February 10 Day Notice, but disputes it as it was not signed by the Landlord. Section 52 of the Act states:

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*

- (c) *state the effective date of the notice,*
- (d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) *for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) *when given by a landlord, be in the approved form. (emphasis mine)*

As the Landlord did not sign the February 10 Day Notice, I find the notice is not effective and I cancel the February 10 Day Notice.

The Landlord's March 10 Day Notice was deemed received by the Tenant on March 27, 2022. I find that the Landlord's March 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 Landlord complies with this Act, the regulations or the tenancy agreement.

After receiving the March 10 Day Notice, the Tenant had five days to pay the outstanding rent or apply for dispute resolution. The Tenant applied for dispute resolution for the March 10 Day Notice on March 31, 2022 within the five days after receiving the notice. I find the Tenant did not require more time to apply for dispute resolution, and I dismiss this part of her application without leave to re-apply. The Landlord's last receipt of rent from the Tenant was on March 1, 2022. The Landlord did not receive rent on the morning of the hearing day as the Tenant testified to in the hearing. I find the Tenant has a lengthy period of not paying rent, and a hefty outstanding rent amount owing to the Landlord, and I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order. Sections 55(1) of the Act read 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 to the landlord an order of possession of the rental unit if*
- (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 Landlord's March 10 Day Notice complies with the form and content requirements of Section 52 of the Act and I dismissed the Tenant's application to cancel the Landlord's notice. I uphold the Landlord's March 10 Day Notice and grant an Order of Possession to the Landlord pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant.

I find the total outstanding rent is \$9,100.00. 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. The Landlord's Monetary Award is calculated as follows:

Monetary Award

| | |
|-------------------------|------------|
| TOTAL OUTSTANDING RENT: | \$9,100.00 |
| Less security deposit: | - \$900.00 |
| TOTAL OWING: | \$8,200.00 |

As the tenancy has ended, I dismiss the Tenant's claim without leave to re-apply for an Order for the Landlord to comply with the Act, regulation and tenancy agreement. As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

For the benefit of the parties, they may wish to discuss with an Information Officer at the RTB the options available to them in their tenancy issues. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

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 Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$8,200.00. 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 04, 2022

Residential Tenancy Branch