



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: **CNR, OLC, FFT, MNDCT, RR**
Landlord: **FFL, OPR-DR, MNR-DR**

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. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act;
4. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to 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. The Landlord's Agent, GC, 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 Landlord's Agent and I were the only ones who had called into this teleconference. The Landlord's Agent was given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlord served the Tenant with the first 10 Day Notice on February 17, 2022 by posting the notice on the Tenant's door (the "first 10 Day Notice"). The Tenant applied for dispute resolution on February 25, 2022 and the Notice of Dispute Resolution Proceeding document generated for this file confirms that the Tenant received the posted 10 Day Notice on February 22, 2022. I find the 10 Day Notice was sufficiently served on the Tenant on February 22, 2022 according to Sections 71(2) and 88(g) of the Act.

The Landlord served the Tenant with the second 10 Day Notice via Canada Post registered mail on May 4, 2022 (the "second 10 Day Notice"). The Landlord's Agent 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 second 10 Day Notice was deemed served on the Tenant on May 9, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord's Agent testified that the Landlord accepts service of the Tenant's Notice of Dispute Resolution Proceeding package and evidence (the "first NoDRP package"). The RTB issued the first NoDRP package to the Tenant on March 10, 2022, and a second NoDRP package to the Tenant on May 27, 2022 which included the Tenant's dispute resolution application for the second 10 Day Notice, and an Amendment for the Tenant's monetary claim (the "second NoDRP package"). I find both of the Tenant's NoDRP packages were sufficiently served on the Landlord in accordance with Section 71(2) of the Act.

The Landlord's Agent testified that they served the Tenant with:

- the Notice of Dispute Resolution Proceeding package-OP/MN on March 16, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"); and,
- the Landlord's evidence on May 19, 2022 by Canada Post registered mail,

The Landlord referred me to the Canada Post registered mail receipts with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers 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 21, 2022, and the Landlord's evidence on May 24, 2022 in accordance with Sections 88(c), 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 Agent's request to amend their original application from \$2,600.00 to \$13,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

For Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Is the Tenant entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided?
5. Is the Tenant entitled to recovery of the application filing fee?

For Landlord:

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.

The Landlord's Agent confirmed that this tenancy began as a fixed term tenancy on January 1, 2022. The fixed term is to end on December 31, 2022. Monthly rent is \$2,600.00 payable on the first day of each month. A security deposit of \$1,300.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord's February 17, 2022 10 Day Notice alleged an outstanding rent amount of \$2,600.00, and the May 4, 2022 10 Day Notice alleged an outstanding rent amount of \$10,400.00. The effective dates of the notices were February 26, 2022, and May 15, 2022 respectively. The Landlord's Agent stated that for the second 10 Day Notice, the outstanding rent amount of \$10,400.00 was due on May 1, 2022.

The Landlord's Agent testified that the Tenant has not paid rent since January 2022, and the outstanding rent amount is \$13,000.00. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$13,000.00.

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 Tenant's absence, therefore, all the Landlord's Agent'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.*

As the Tenant did not attend this hearing to provide evidence about their claims, I dismiss the Tenant's application 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].*
- ...
- (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.*
- ...

The Tenant was sufficiently served with the first 10 Day Notice on February 22, 2022, and was deemed served with the second 10 Day Notice on May 9, 2022. I find that the Landlord's first and second 10 Day Notices complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on February 25, 2022 and on May 10, 2022 both within the five days after receiving the respective 10 Day Notices.

The Landlord's Agent submitted that the Tenant has neither received permission from the Landlord to withhold rent, nor received an Arbitrator's Order to withhold rent. I find that the Tenant is behind in five months of rent payments, and the Landlord's 10 Day Notices are upheld.

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:

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 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 is \$13,000.00. 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. 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:	\$13,000.00
Less security deposit:	-\$1,300.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$11,800.00

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 \$11,800.00. 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 13, 2022

Residential Tenancy Branch