



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LRE, OLC, FFT**
 CNR, LRE

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 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; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with a repeat Tenant's application pursuant to the Act for:

5. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Section 46(1) of the Act; and,
6. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act.

The hearing was conducted via teleconference. The Landlord, Support and Legal Counsel attended the hearing at the appointed date and time. The Tenant called into the hearing about fifteen minutes after we began. 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 personally served the Tenant with the One Month Notice on March 2, 2022. The Landlord uploaded a Proof of Service form #RTB-34 dated March 2, 2022 attesting to this service. I find the Tenant was served with the Landlord’s One Month Notice on March 2, 2022 in accordance with Section 88(a) of the Act.

The Landlord testified that the Tenant did not serve the Notice of Dispute Resolution Proceeding package (the “NoDRP package”) for this hearing on the Landlord. The Landlord received a courtesy copy of the NoDRP package from the RTB on April 22, 2022. I find the Landlord was sufficiently served with the NoDRP package on April 22, 2022 in accordance with Sections 71(2)(b) of the Act.

The Landlord served the Tenant with the 10 Day Notice on June 6, 2022 by posting the notice on the Tenant’s door. The Landlord uploaded a Proof of Service form #RTB-34 dated June 6, 2022 attesting to this service. I find the 10 Day Notice was deemed served on the Tenant on June 9, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord personally served his evidence on the Tenant on July 8, 2022. The Landlord uploaded a Proof of Service form #RTB-34 dated July 8, 2022 attesting to this service. I find the Tenant was served with the Landlord’s evidence on July 8, 2022 in accordance with Section 88(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 \$8,500.00 to \$11,000.00 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 cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?
4. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
5. Is the Tenant entitled to recovery of the application filing fee?
6. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
7. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

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 testified that this tenancy began as a fixed term tenancy on November 1, 2020. The fixed term ended on October 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,500.00 payable on the first day of each month. A security deposit of \$1,250.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$8,500.00 in outstanding rent on June 1, 2022. The effective date of the 10 Day Notice was June 16, 2022.

The Landlord testified that the Tenant also did not pay July's rent, and the outstanding rent amount is \$11,000.00.

The Tenant testified that the Landlord has not provided permission to her to withhold rent, and she has not received an Arbitrator's Order authorizing her to withhold rent. The Tenant stated she has been struggling. She said her mother passed away recently and she is expecting an inheritance which she thought she would have received already. She said when she receives it, she will pay her outstanding rent, and provide the Landlord with one year's rent as goodwill.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$11,000.00.

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.

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 Landlord's 10 Day Notice was deemed served on June 9, 2022. I find the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied to dispute the 10 Day Notice on June 10, 2022 which was within five days after receiving the notice.

The Tenant testified that she does not have permission, from the Landlord or an Arbitrator, to withhold rent. I find on a balance of probabilities that the 10 Day Notice is valid, and I dismiss the Tenant's application to cancel the 10 Day Notice.

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 previously found that the 10 Day Notice complied with Section 52 of the Act, and I uphold the Landlord's 10 Day Notice. 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 amount is \$11,000.00. 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. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$11,000.00
Less security deposit:	-\$1,250.00
TOTAL OWING:	\$9,750.00

As this tenancy has ended, I dismiss all the Tenant's other claims without leave to re-apply.

Conclusion

All the Tenant's claims are dismissed without leave to re-apply.

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 \$9,750.00. 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: July 21, 2022

Residential Tenancy Branch