



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: **CNR, MNDCT, RR, LRE**
Landlord: **OPR-DR, MNR-DR, FFL**

Introduction

This hearing dealt with the Tenants' 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 to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
4. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for a 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 Agents, JZ and DF, and one Tenant, MAT, 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 Tenant at the hearing testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on March 19, 2022 by Canada Post registered mail (the “NoDRP package”). I note that the Tenant only applied to dispute the 10 Day Notice once, rather than apply for dispute resolution for each 10 Day Notice. The Tenant in the hearing 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 24, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that they served each Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN and evidence on March 23, 2022 by Canada Post registered mail (the “NoDRP package-OP/MN”). 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 each Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on March 28, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

Preliminary Matters

Parties Names

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenants’ application, the Tenant named the Landlord, using a name that was not listed on their tenancy agreements. In the hearing, JZ, Agent for the Landlord, advised that the property was sold, and gave the new Landlord’s name. JZ testified that the Landlord listed on the tenancy agreement sold to the current Landlord earlier in 2022.

The Tenant advised that his daughter’s name was incorrectly written in the paperwork leading up to this hearing day. He gave her correct full name.

I asked the parties if I had their agreement to amend the names to correctly reflect the parties in this matter. All parties agreed, and the correct Tenants' names and Landlord name are noted in the style of cause of this decision.

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 that the Landlord's name and Tenant's daughter's name must be changed. I amended the names, and they are reflected in this decision.

Joining Applications

RTB Rules of Procedure 2.10 allows me to join applications when the following criteria is met:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Although the Tenants combined their dispute of the 10 Day Notices in one application, the effect is the same. I accept that the Tenants' application deals with each of the 10 Day Notices served by the Landlord, and it meets the criteria under Rule 2.10.

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 Tenants had indicated different matters of dispute on their application, the most urgent of which is the claim to cancel the 10 Day Notices. 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 Tenants' request to cancel the 10 Day Notices. The Tenants' other claims are dismissed, with leave to re-apply.

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 amounts as follows:

Tenant #7 - \$642.25 to \$2,569.00;
Tenant #8 - \$650.00 to \$2,600.00; and,
Tenant #5 - \$650.00 to \$2,600.00.

These amounts reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notices?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recovery of the three application filing fees paid to start their applications?

Background and Evidence

The following are agreed facts:

The periodic tenancy for Room #7 began on July 7, 2021. Monthly rent is \$642.25 payable on the first day of each month. A security deposit of \$312.50 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord served the Tenant of Room #7 (Tenant #7) with the 10 Day Notice on March 2, 2022 by posting the notice on Tenant #7's door. The Landlord uploaded a witnessed Proof of Service #RTB-34 form attesting to service of the 10 Day Notice.

The periodic tenancy for Room #8 began on June 23, 2021. Monthly rent is \$650.00 payable on the first day of each month. A security deposit of \$325.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord served the Tenant-Room #8 (Tenant #8) with the 10 Day Notice on March 2, 2022 by posting the notice on Tenant #8's door. The Landlord uploaded a witnessed Proof of Service #RTB-34 form attesting to service of the 10 Day Notice.

The periodic tenancy for Room #5 began on June 15, 2021. Monthly rent is \$650.00 payable on the first day of each month. A security deposit of \$325.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord served the Tenant-Room #5 (Tenant #5) with the 10 Day Notice on March 2, 2022 by posting the notice on Tenant #5's door. The Landlord uploaded a witnessed Proof of Service #RTB-34 form attesting to service of the 10 Day Notice.

On February 24, 2022, the Landlord purchased the residential property. On February 25, 2022, the Landlord emailed, called, and text messaged all the tenants in the residential property giving them notice of the change of ownership from the seller's lawyer and directing them to pay the new Landlord their required rent as of March 1, 2022.

The Tenant argues that he does not have a contract with the new Landlord. He stated that the Landlord's Agent has told him that he and his family must pay electricity and gas for the residential property, and that they have to pay rent for the whole year. The Landlord states that the Landlord does not require the Tenants to pay the electricity, gas, cable, and city utility charges, he said, "*Everything is covered.*"

The Tenants submitted in their documentary evidence that they paid the previous Landlord for the rent for March 2022. The Tenant in the hearing said they sent an e-transfer for March's rent to the previous Landlord.

The Landlord stated that the Tenants in each of the rooms have not paid rent to the new Landlord starting on March 1, 2022, up to the date of the hearing. The Landlord states that Tenant #7 owes \$2,569.00 in outstanding rent to the new Landlord, Tenant #8 owes \$2,600.00 in outstanding rent to the new Landlord, and Tenant #5 owes \$2,600.00

in outstanding rent to the new Landlord. The Landlord is seeking an Order of Possession and a Monetary Order for the outstanding rents.

The Tenant argues because they do not have a signed tenancy agreement with the new Landlord, that they do not have a contract requiring them to pay rent to the new Landlord.

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.

Section 93 of the Act states that obligations of the Landlord run with the land. This means the rights are tied to the property, and when the property changes hands, the obligations tied to the property pass to the new owner. Based on the fact that the Landlord purchased the residential property on February 24, 2022, I find all the tenancy agreements tied to the property went with the sale of the residential property. The previous named Landlord on the Tenants' tenancy agreements is no longer a party to the tenancy agreements now, and I decline to grant any orders with the name of the old Landlord.

The Tenant testified that he does not have a contract with the current Landlord. Oftentimes, property owners sell their residential rental properties, and typically, the new Landlord takes over the rental of the property. The obligations of the Landlord run with the property, thus, if the Landlord changes, the new Landlord retains the obligations in the current tenancy agreement. It is not required that a new tenancy agreement must be signed, although sometimes that does happen. I find that the residential property was sold to the new Landlord named in this decision, and his obligations, and those of his new tenants are now currently between the new Landlord and the current tenants in the residential property.

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 served each Tenant with a 10 Day Notice on March 2, 2022 by posting the notice on each Tenant's door. The Landlord uploaded a Proof of Service form #RTB-34 attesting to each service of the notice. I find the 10 Day Notices were deemed served on Tenant #7, Tenant #8, and Tenant #5 on March 5, 2022 according to Sections 88(g) and 90(c) of the Act. I find all 10 Day Notices complied with the form and content requirements of Section 52 of the Act. The Tenants applied to dispute the notices on March 7, 2022 which was within five days after receiving the 10 Day Notices.

Although the Tenants' evidence is that they paid rental monies by e-transfer for the month of March to the previous Landlord, the Tenants were required to pay their rent to the new Landlord. The Landlord testified that the Tenants have not paid any rent to the new Landlord since March 1, 2022. The Tenant did not provide evidence that they have authority from an Arbitrator to withhold rent from the Landlord. I find on a balance of probabilities that the 10 Day Notices were valid, and I dismiss the Tenants' application to cancel the notices.

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.*

The Landlord is entitled to an Order of Possession for each of the three rooms pursuant to Section 55(1) of the Act which will be effective two (2) days after service on each Tenant.

The Landlord is also entitled to Monetary Orders to recover the outstanding rent amount from each Tenant pursuant to Section 55(1.1) of the Act. The total outstanding rent amount owed by the Tenant #7 is \$2,569.00, the total outstanding rent amount owed by the Tenant #8 is \$2,600.00, and the total outstanding rent amount owed by the Tenant #5 is \$2,600.00. 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 deposits held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claims, 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 against Tenant #7:

TOTAL OUTSTANDING RENT:	\$2,569.00
Less security deposit:	-\$312.50
Plus application filing fee:	\$100.00
TOTAL OWING:	\$2,356.50

Monetary Award against Tenant #8:

TOTAL OUTSTANDING RENT:	\$2,600.00
Less security deposit:	-\$325.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$2,375.00

Monetary Award against Tenant #5:

TOTAL OUTSTANDING RENT:	\$2,600.00
Less security deposit:	-\$325.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$2,375.00

Despite there being one application made by the Tenants, I am going to set out the individual Orders of Possession and Monetary Orders in each of the Tenant's names and room numbers. I am granting the orders as named by the Landlord in each of the Landlord's applications.

Conclusion

The Landlord is granted Orders of Possession against each Tenant, which will be effective two (2) days after service on the Tenants. The Landlord must serve these Orders on the Tenants as soon as possible. The Orders of Possession may be filed in and enforced as Orders of the Supreme Court of British Columbia.

I grant Monetary Orders to the Landlord as follows:

- against Tenant #7, in the amount of \$2,356.50;
- against Tenant #8, in the amount of \$2,375.00; and,
- against Tenant #5, in the amount of \$2,375.00.

The Tenants must be served with these Orders as soon as possible. Should the Tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as Orders 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