



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: **CNR, RR, MNDCT, RP, OLC, PSF**
Landlords: **MNR-DR, OPR-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 to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 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 repairs to the unit, I have contacted the Landlord in writing to make repairs but they have not been completed pursuant to Section 32 of the Act;
5. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
6. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act.

This hearing also dealt with the Landlords' 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. One Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants 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 and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlords served the Tenants with the 10 Day Notice on April 4, 2022 by posting the notice on the Tenants' door. The Landlords uploaded a witnessed Proof of Service form #RTB-34 attesting to service of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenants on April 7, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenants applied for dispute resolution on April 7, 2022, and were issued the Notice of Dispute Resolution Proceeding package for this hearing (the "NoDRP package") on April 20, 2022. The Landlord testified that they were not served with the Tenants' NoDRP package or evidence at all. Pursuant to Section 89 of the Act, an application for dispute resolution, when required to be given to one party by another, must be given in one of the following ways:

- a. by leaving a copy with the person;
- b. if the person is a landlord, by leaving a copy with an agent of the landlord;
- c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- d. if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- e. as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- f. by any other means of service provided for in the regulations (e.g.: by email).

As the Tenants did not serve the Landlords at all with the NoDRP package or their evidence, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure parties know the case against them, parties are given an opportunity to reply to the case against them and to have their case heard by an impartial decision-maker: *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Tenants' application against the Landlord. I dismiss all of the Tenants' claims related to the possession of the unit without leave to re-apply as these will be dealt with in this application. The Tenants' claim for an Order for compensation for a monetary loss is dismissed with leave to re-apply.

The Landlord testified that they served the Tenants with the Notice of Dispute Resolution Proceeding package-OP/MN on April 29, 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 the Tenants were deemed served with the NoDRP package-OP/MN five days after mailing them on May 4, 2022 in accordance with Sections 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's request to amend their original application from \$6,320.00 to \$16,320.00 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 a 10 Day Notice?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords 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 periodic tenancy began on July 1, 2021. Monthly rent is \$2,500.00 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 reason in the 10 Day Notice why the Landlords were ending the tenancy was because the Tenants owed \$6,320.00 in outstanding rent on April 1, 2022. The effective date of the 10 Day Notice was April 14, 2022.

The Landlord testified that in February 2022, the Tenants only paid \$1,180.00 in rent. The Landlord stated since March 2022 to the present, they have not received any rental money from the Tenants. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$16,320.00.

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 Tenants' 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.

As the Tenants did not attend this hearing to provide evidence on their claims, and service of their NoDRP package was not effected, all their claims related to the possession of the unit are dismissed without leave to re-apply. The Tenants' claim for an Order for compensation for a monetary loss is dismissed with 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.*

(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 Tenants were deemed served with the 10 Day Notice on April 7, 2022. I find that the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on April 7, 2022 which was within the 5 days after receiving the 10 Day Notice.

The Landlord testified that the Tenants are in rental arrears totalling \$16,320.00. Based on the undisputed testimony of the Landlords, I find that the Landlords' 10 Day Notice is valid, and I uphold the notice.

I must consider if the Landlords are 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 Landlords' 10 Day Notice and I find the Landlords are 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 Tenants.

The Landlords are 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 \$16,320.00. RTB Rules of Procedure 4.2 allows me to amend the Landlords' original application amount, and I do so in this decision. 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. Since the Landlords were successful in their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlords' Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$16,320.00
Less security deposit:	-\$1,300.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$15,120.00

Conclusion

The Landlords are granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlords must serve this Order on the Tenants 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 \$15,120.00. The Tenants must be served with this Order as soon as possible. Should the Tenants 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: August 04, 2022

Residential Tenancy Branch