



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, FFT**

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 the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) 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 Property Manager, Property Administrator as witness, and the Tenant 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 the 10 Day Notice on May 2, 2022 by posting the notice on the Tenant's door. The Landlord's witness confirmed that three pages of the 10 Day Notice were posted on the Tenant's door on May 2, 2022. The Tenant confirms receipt of the first two pages of the 10 Day Notice. I find the 10 Day Notice was deemed served on the Tenant on May 5, 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 on May 19, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant uploaded Canada Post registered mail receipts and tracking numbers into her documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on May 24, 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 evidence that the unpaid rent amount is higher than when the 10 Day Notice was first served, and I amend their original application from \$1,928.50 to \$9,642.50 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 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
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 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 parties confirmed that this tenancy began as a fixed term tenancy on April 1, 2020. The fixed term ended on March 31, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,928.50 payable on the first day of each month. A security deposit of \$950.00 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 \$1,928.50 in outstanding rent on May 1, 2022. The effective date of the 10 Day Notice was May 18, 2022.

The Property Manager posted the notice, and he stated that he posted three pages on the Tenant's front door. The Landlord's witness testified that he witnessed the Property Manager posting the 10 Day Notice on the Tenant's door. The witness stated that he knew the document was a 10 Day Notice to end tenancy, and he recalled the posting comprising a total of three pages. The 10 Day Notice specified that it was served by attaching a copy to the door or other conspicuous place where the tenant resides and by email to an email address provided as an address for service. The Tenant stated she did not receive the 10 Day Notice by email.

The Tenant stated she does not have an Arbitrator's order or the Landlord's permission to withhold rent. The Landlord testified that the Tenant has not paid rent since May 2022, and the total outstanding rent for the past five months is \$9,642.50. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$9,642.50.

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 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.* (emphasis mine)

The Tenant seeks to cancel the notice because she testified she only received two pages of the notice. She stated, in order to be valid, it must be in the approved form. The Landlord's witness provided testimony that when the 10 Day Notice was served, three pages were posted on the Tenant's door. I find the Tenant received the full notice posted on her door, and whether or not the Landlord has complied with the Act, Regulation or tenancy agreement, rent is due on the first of the month.

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 10 Day Notice was deemed served on May 5, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act which states:

Form and content of notice to end tenancy

- 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,*

...

(e) *when given by a landlord, be in the approved form.*

The Tenant applied for dispute resolution on May 10, 2022 which was within the five days after receiving the 10 Day Notice.

The Property Manager testified that the Tenant has not paid rent since May 2022. The Tenant honestly stated 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 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 amount is \$9,642.50. 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:	\$9,642.50
Less security deposit:	-\$950.00
TOTAL OWING:	\$8,692.50

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 \$8,692.50. 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: September 15, 2022

Residential Tenancy Branch