



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for 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.

The hearing was conducted via teleconference. Both Landlords 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlord served the Tenants with the 10 Day Notice on May 26, 2022 by posting the notice on the Tenants' door. The Tenants' Notice of Dispute Resolution Proceeding stated the Tenants' received the posted notice. I find the 10 Day Notice was served on the Tenants on May 26, 2022 according to Section 88(g) of the Act.

The Landlords testified that the Tenants served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlords by posting the notice on their door on June 9, 2022 (the "NoDRP package"). 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 properly serve the Landlord with the NoDRP package, 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 Tenant's application against the Landlord. I note the Landlords previously received an Order of Possession against these Tenants, and the Tenants were evicted. I dismiss the Tenants' claims without leave to re-apply.

The Landlord uploaded their documentary evidence for this matter on September 18 and 20, 2022. The Tenants did not provide a forwarding address to the Landlord at the end of this tenancy. The Landlord applied for authorization for substitution service on the Tenants, but that direct request application was dismissed. Pursuant to RTB Rules 7.3 and 7.4, I will consider the Landlord's evidence as needed to make my determinations in this matter.

Preliminary Matter

Naming parties

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 Tenants provided names that are not their own. In the hearing, the Landlord provided the correct names of all the Tenants which correspond to the names of people who signed the tenancy agreement. I asked the Landlord if I had their agreement to amend the Tenants' names in the application. The Landlord agreed, and the correct Tenants' names 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 Tenants are properly named corresponding to the names of people who signed the tenancy agreement. I amended the Tenants' names, and they are reflected in this decision.

Issue to be Decided

Is the Landlord entitled to a Monetary Order for unpaid utilities?

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 December 6, 2021. The fixed term was to end on December 6, 2022. Monthly rent was \$1,500.00 payable on the first day of each month, plus 50% of the utilities. A security deposit of \$750.00 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 Tenants owed \$632.53 in outstanding utilities, and \$645.00 in outstanding insurance payments, for a total of \$1,277.53. The effective date of the 10 Day Notice was May 26, 2022.

The Landlord submitted that he provided the Tenants with a written demand notice of the outstanding rent, insurance and utilities on March 1, 2022. The Landlord testified that the Tenants agreed to pay the Tenants' insurance portion for the rental unit. The Fortis gas total was \$121.00 and the BC Hydro total was \$96.00 at that time. The Landlord now seeks a Monetary Order for unpaid utilities for the months of February to May totalling \$632.53 and \$645.00 for outstanding insurance payments.

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 RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlord'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.*

The Landlord served the 10 Day Notice on May 26, 2022. Section 53 of the Act enables incorrect effective dates to automatically change. As the 10 Day Notice was served on May 26, 2022, then the effective date for the 10 Day Notice is corrected to June 5, 2022 pursuant to Section 53(2) of the Act. The Tenants applied for dispute resolution, but did not effectively serve the NoDRP package on the Landlord and I dismissed their application without leave to re-apply.

The Landlord's 10 Day Notice for unpaid utilities is a valid notice, and I uphold the Landlord's notice. The Landlord was previously granted an Order of Possession on May 20, 2022. A bailiff removed the Tenants from the rental unit and changed the locks on the front door on June 13, 2022. I must consider if the Landlord is entitled to a Monetary Order for unpaid utilities. 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 a Monetary Order to recover the outstanding utilities owing as unpaid rent pursuant to Section 55(1.1) of the Act. The Act does not permit the inclusion of the amount for unpaid insurance which the Landlord stated the Tenants agreed to pay. The total outstanding utilities owing are \$632.53. 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 satisfaction of the monetary award. There is a future monetary claim for which the Landlord may hold the balance of the security deposit of \$117.47 in trust for that matter. The Landlord is authorized to take \$632.53 out of the security deposit held in trust for the Tenants as follows:

Monetary Award

Total Utilities Owing:	-\$632.53
Less security deposit:	\$750.00
TOTAL Security Deposit in Trust:	\$117.47

Conclusion

The Tenants' application is dismissed without leave to re-apply.

The Landlord is authorized to take \$632.53 out of the security deposit held in trust for the Tenants to satisfy the unpaid utilities owing.

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: October 04, 2022

Residential Tenancy Branch