



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: **OPR-DR, MNR-DR, FFL**
Tenant: **CNR-MT, CNC, FFT**

Introduction

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

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "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.

This hearing also dealt with the Tenant's cross application pursuant to 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. More time to dispute the notice pursuant to Section 66 of the Act;
3. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant 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 Landlords served the Tenant with the 10 Day Notice on July 4, 2022 by posting the notice on the Tenant's door. The Landlords uploaded a witnessed Proof of Service form #RTB-34 attesting to this service. I find the 10 Day Notice was deemed served on the Tenant on July 7, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant applied for dispute resolution on July 29, 2022. RTB Rules of Procedure 7.3 states:

7.3 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 Tenant did not attend the hearing, I dismiss her application without leave to re-apply.

The Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on August 26, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlords uploaded the Canada Post registered mail receipt with tracking number 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 Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on August 31, 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. My Amendment is discussed in my analysis.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for the 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 presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlords confirmed that this tenancy began as a fixed term tenancy on June 1, 2021. That fixed term ended and the Tenant began another fixed term tenancy on June 1, 2022. That fixed term was to end on December 1, 2022. Monthly rent was \$1,300.00 payable on the first day of each month. A security deposit of \$675.00 was collected in the first fixed term tenancy, and the Landlords still hold that deposit in trust.

The reason in the 10 Day Notice why the Landlords were ending the tenancy was because the Tenant owed \$1,300.00 in outstanding rent on July 1, 2022. The effective date of the 10 Day Notice was July 17, 2022.

The male Landlord credibly testified that he was unsure of dates of the notices that were served on the Tenant, but he stated that after serving the 10 Day Notice, the Tenant stopped paying rent. He first thought it was June, then stated it had been four months since they have received rent from the Tenant. The Landlords re-rented out the unit starting November 1, 2022.

The Landlords stated that the Tenant abandoned the rental unit at the beginning of September 2022. It took them two months to get the unit prepared for new tenants. The Landlords stated they no longer require an Order of Possession.

The Landlords testified that the Tenant does not have any outstanding orders issued by an Arbitrator authorizing the Tenant to withhold rent. The Landlord also stated they did not give the Tenant permission to withhold rent.

The Landlords are seeking a Monetary Order for unpaid rent in the amount of \$5,200.00 (4 months X \$1,300.00).

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 Tenant's 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.*

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].*

...

- (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 Landlords' 10 Day Notice was deemed served on the Tenant on July 7, 2022. I find that the Landlords' 10 Day Notice complied with the form and content requirements of Section 52 of the Act. Based on the undisputed testimony of the Landlords, the Tenant did not pay any rent after receiving the 10 Day Notice and the Tenant did not apply for dispute resolution within five days after receiving the notice. The Landlords also submitted that the Tenant is still in rental arrears in this tenancy, she does not have permission from the Landlords to withhold rent and the Tenant does not have an Arbitrator's Order to withhold rent. Accordingly, I find the Landlords' 10 Day Notice is valid.

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.*

The Tenant disputed the Landlords' 10 Day Notice, but did not attend this hearing to speak to her application. I dismissed the Tenant's application. The Landlords no longer require an Order of Possession; however, if they had, I would have ordered it.

RTB Policy Guideline #3-Claims for Rent and Damages for Loss of Rent states that:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA (section 48(1.1) of the MHPTA). (emphasis mine)

The Landlords said they went by the rental unit at the beginning of September 2022 and they determined that the Tenant had abandoned the suite. I find the tenancy ended pursuant to Section 44(1)(d) of the Act, and I find the end date of the tenancy is amended to September 1, 2022 pursuant to Section 68(2)(a) of the Act.

RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Further to the September 1, 2022 end of tenancy date, I find the outstanding rent amount is \$2,600.00 which reflects the unpaid rent that became owing by the time this hearing was convened.

The Landlords are entitled to a Monetary Order for non-payment of rent pursuant to Section 55(1.1) of the Act. The total outstanding rent amount is \$2,600.00. 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. I find the Landlords are entitled to recover the application filing fee paid to start this application. The Landlords' Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$2,600.00
Less security deposit:	-\$675.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$2,025.00

Conclusion

I grant a Monetary Order to the Landlords in the amount of \$2,025.00. 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: January 06, 2023

Residential Tenancy Branch