



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding VANCOUVER NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT**

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; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, AC and MA, and Witness, NT, 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 Landlord's Agents and I were the only ones who had called into this teleconference. The Landlord's Agents were 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's Agents testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on October 19, 2022 by posting the notice on the Tenant's door. The Landlord's Witness testified that she observed the Property Manager attach the notice to the Tenant's door on October 19, 2022. I find the 10 Day Notice was deemed served on the Tenant on October 22, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant received the Notice of Dispute Resolution Proceeding package from the RTB on November 15, 2022 (the “NoDRP package”). The Tenant did not serve the Landlord with the NoDRP package. The Landlord’s Agent testified that they received an email notification from the RTB for this hearing date. 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.

As the Tenant did not serve the Landlord at all 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 dismiss the Tenant’s application.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order for the 10 Day Notice?

Background and Evidence

I have reviewed the 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 Landlord's Agent confirmed that this periodic tenancy began on November 1, 2021. Monthly rent is geared to income and is set at \$834.00 payable on the first day of each month. A security deposit of \$946.50 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 \$884.00 in outstanding rent on October 1, 2022. The effective date of the 10 Day Notice was November 1, 2022.

The Landlord's Agents had no idea that the Tenant had applied for dispute resolution on their 10 Day Notice. They confirmed that the Tenant is currently in arrears in rent in the amount of \$858.00.

The Landlord's Agents want to assist the Tenant, whether that is establishing a repayment plan or a temporary hardship arrangement that will work for the Tenant. AC stated they emailed the Tenant on March 10, 2023, but they still have not received a response from her. Due to the nature of the building and the programs offered, they want to ensure that the Tenant is still eligible for housing in the residential property. They maintained that they want to make this tenancy work.

CA stated that MA, Property Manager, has a good rapport with the tenants and they want to work with the Tenant to help her maintain her housing. However, due to time constraints, the Landlord's Agents seek an Order of Possession and a Monetary Order totalling \$858.00 which they may or may not serve on the Tenant.

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.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's 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.*

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 Landlord's 10 Day Notice was deemed served on the Tenant on October 22, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act.

The Tenant applied for dispute resolution on October 31, 2022 which was beyond the five days the Tenant had to dispute the 10 Day Notice. The Tenant also applied for more time to dispute her claim, but because she neither served the Landlord with the NoDRP package nor attended this hearing to give testimony, I dismissed her application. Based on the undisputed testimony of the Landlord, the Tenant is still in rental arrears in this tenancy. I find the Tenant did not dispute the 10 Day Notice in time and is conclusively presumed to have accepted that the tenancy ended on November 1, 2022. I uphold the Landlord's 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 on March 31, 2023 at 1:00 p.m.

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 \$858.00. I grant the Landlord a Monetary Order for non-payment of rent in the amount \$858.00.

Conclusion

The Landlord's 10 Day Notice is upheld, and I grant an Order of Possession to the Landlord effective on March 31, 2023 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$858.00. 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: March 13, 2023

Residential Tenancy Branch