



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: **CNR-MT, LRE, LAT, OLC**

Landlord: **OPR-DR, MNR-DR, MNDCL, FFL**

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. More time to dispute the notice pursuant to Section 66 of the Act; and,
3. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
4. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act; and,
5. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

This hearing also dealt with the Landlord's application pursuant to the Act for:

1. An Order of Possession for the 10 Day Notice pursuant to Sections 46 and 55 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
3. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 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 Landlord's Agents 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 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's Agents testified that they were not recording this dispute resolution hearing.

The Landlord's Agent served the Tenant with the 10 Day Notice on November 4, 2022 by posting the notice on the Tenant's door. The Landlord 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 November 7, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant did not attend this hearing. The Landlord's Agents testified that they were not served with a copy of the Tenant's Notice of Dispute Resolution Package or evidence. 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 or her 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 Tenant's application against the Landlord. I dismiss all of the Tenant's claims without leave to re-apply.

The Landlord's Agent testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on November 28, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted 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 December 3, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenant with their Amendment to their application by Canada Post registered mail on March 2, 2023. The Landlord referred me to the Canada Post registered mail tracking number 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 Landlord's Amendment five days after mailing them on March 7, 2023 in accordance with Sections 88(1)(d) 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 \$1,600.00 to \$8,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

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 to recover money for unpaid rent?
3. Is the Landlord entitled to an Order for compensation for a monetary loss or other money owed?
4. Is the Landlord 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 Landlord's Agent testified that this tenancy began as a fixed term tenancy on September 1, 2022. The fixed term would end on August 31, 2023. Monthly rent is \$1,600.00 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord's Agent stated the Tenant has not paid rent since November 2022 and up to the hearing date. The total rent owing is \$8,000.00.

The Landlord also claims compensation totaling \$176.91 for parking and utilities. The tenancy agreement notes that parking is not included in the rent; and the agreement does not list parking as an additional fee. The tenancy agreement addendum states, "*There may be separate written agreements for the provision of and fees for parking, storage, and/or other services. Such agreements do not and will not form part of this tenancy agreement.*" (emphasis mine) The Landlord did not upload any further written agreements.

The Landlord has not provided a 30-day demand letter to the Tenant for the utilities.

The Landlord stated that the Tenant does not have permission from the Landlord to withhold rent, and the Tenant has not received an Order from an Arbitrator authorizing

her to withhold rent. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$8,176.91.

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 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.*
- (6) *If*
 - (a) *a tenancy agreement requires the tenant to pay utility charges to the landlord, and*
 - (b) *the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*
the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. (emphasis mine)

The Tenant was deemed served with the 10 Day Notice on November 7, 2022. I find that the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on November 10, 2022 which was within the 5 days after receiving the 10 Day Notice; however, the Tenant did not serve the Landlord with her NoDRP package and I dismissed her claims without leave to re-apply.

The Landlord's Agents testified that they did not submit a written demand letter to the Tenant for payment of the outstanding utilities. I find, pursuant to Section 46(6) of the Act, that any outstanding utilities cannot be treated as unpaid rent in this matter as the Landlord has not given a written demand for them. I dismiss this part of the Landlord's claim set out in their Amendment with leave to re-apply.

In the Landlord's lease ledger parking is charged each month and was included in the balance owing for rent. The Tenant paid for two months of parking on top of the outstanding October rent on October 14, 2022. I find that parking is included as an extra fee in the tenancy and forms part of the rent, and accordingly, the Tenant owes parking for the five months from November 2022 to March 2023 totaling \$125.00.

The Tenant has not paid rent starting in November 2022 to March 2023. The Tenant did not attend the hearing to provide evidence explaining any reasons why she has not paid rent. The Landlord's Agents testified that the Tenant does not have permission, from the

Landlord or an Arbitrator, to withhold rent. I find on a balance of probabilities that the Landlord has proven that the 10 Day Notice is valid, and I uphold 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 and parking fees pursuant to Section 55(1.1) of the Act. The total outstanding rent and parking fees are \$8,125.00. 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. Since the Landlord was successful in their claim, I grant them recovery of the application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$8,000.00
Less security deposit:	-\$800.00
Plus parking fees	\$125.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$7,425.00

Conclusion

The Tenant's application is dismissed.

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 \$7,425.00. 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 24, 2023

Residential Tenancy Branch