



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding WELBEC PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: **CNR, OLC**
Landlord: **OPR, MNRL, FFL**

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46, 55 and 62 of the Act; and,
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under section 62(3) of the Act;

This hearing also dealt with the Landlord's cross application under the Act for:

1. An Order of Possession for a 10 Day Notice under sections 46, and 55 of the Act;
2. A Monetary Order to recover money for unpaid rent under sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agents, K.G. and C.S., and the Tenant, B.M., 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 (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 personally served the first 10 Day Notice on May 31, 2023. The Landlord uploaded a witnessed proof of service form #RTB-34 attesting to this service. I find that the first 10 Day Notice was served on the Tenant on May 31, 2023 according to section 88(a) of the Act.

The Landlord served the second 10 Day Notice on the Tenant on June 7, 2023 by attaching the notice on the Tenant's door. The Tenant confirmed receipt of the notice. I find the second 10 Day Notice was deemed served on the Tenant on June 10, 2023 according to sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlord with the Proceeding Package and evidence for this hearing on June 14, 2023 by Canada Post registered mail. The Tenant 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. The Landlord said they were unsure if they received the Tenant's Proceeding Package. I find that the Landlord was deemed served with the Tenant's Proceeding Package five days after mailing them, on June 19, 2023, according to sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that they served the Tenant with the Proceeding Package-OP/MN and evidence on June 16, 2023 by Canada Post registered mail. The Landlord referred me to their proof of service form #RTB-55 and Canada Post registered mail tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant stated she received the evidence, but she had to call the RTB to request a courtesy copy of the Proceeding Package. I find that the Tenant was deemed served with the Landlord's Proceeding Package-OP/MN five days after mailing them on June 21, 2023 according to 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, the Landlord seeks to amend their second 10

Day Notice application amount from \$5,850.00 to \$9,750.00 to reflect the unpaid rent and unpaid deposits that became owing by the time this hearing was convened.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. Is the Tenant entitled an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

Landlord:

1. Is the Landlord entitled to an Order of Possession for a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. 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 parties confirmed and the Tenant uploaded a tenancy agreement that this tenancy began as a fixed term tenancy on May 1, 2023. The fixed term was to end on September 30, 2023, then the tenancy was to continue on a month-to-month basis. Monthly rent is \$1,950.00 payable on the first day of each month. The Tenant was to pay a security deposit of \$975.00 and a pet damage deposit of \$975.00, but the Landlord never received this.

The reason in the first 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$3,900.00 in outstanding rent on May 1, 2023. The effective date of the first 10 Day Notice was June 10, 2023.

The Landlord C.S. testified that they issued the second 10 Day Notice because there was a typo in the Tenant's name. Landlord K.G. stated the second 10 Day Notice was issued because the amount owing had increased to \$5,850.00 which included two months of unpaid rent, and \$1,950.00 for the deposits they had not received.

The reason in the second 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$5,850.00 in outstanding rent on June 1, 2023. The effective date of the second 10 Day Notice was June 17, 2023.

The Landlord testified that the Tenant has not paid her security deposit and pet damage deposit, totalling \$1,950.00. The Landlord also submitted that the Tenant has not paid any rent since the beginning of the tenancy, and they seek \$7,800.00 in unpaid rent.

The Tenant testified that she was not aware that her deposits had not been paid, or that she was in arrears paying rent. She said she was working with the disability office, and she stated she instructed that office to directly pay the Landlord.

The Landlord said they have many clients whose rent and deposits are paid from the disability office, but they said they have had no contact with the disability office about this Tenant. 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 \$9,750.00.

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. 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.*

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 spelling of the Tenant's name is the same on both 10 Day Notices. I find that both of the Landlord's 10 Day Notices complied with the form and content requirements of section 52 of the Act. I will deal with the second 10 Day Notice in my analysis of this application.

The Landlord's agents provided documentary evidence and verbal evidence detailing the amount of unpaid rent and the fact that the Tenant has not paid her deposits.

I find the Tenant has not paid rent when it was due and is in arrears. The total outstanding rent amount is \$7,800.00. After receiving the second 10 Day Notice, the Tenant did not pay the outstanding rent and she applied for dispute resolution on June 11, 2023 within five days after receiving the second notice.

The Landlord testified 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 Tenant did not dispute these facts. I find on a balance of probabilities that the second 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 second 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 only. Section 55(1.1) of the Act permits me to grant an order requiring the payment of the unpaid rent. The total outstanding rent is \$7,800.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's second application amount, and I do so in this decision; however, that amount will not include the security deposit and pet damage deposit the Landlord seeks. The Landlord must, at the end of this tenancy if there is damage, apply for dispute resolution for the damage and loss they may seek.

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:	\$7,800.00
Plus application filing fee:	\$100.00
TOTAL OWING:	\$7,900.00

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 \$7,900.00. 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: August 11, 2023

Residential Tenancy Branch