



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: **CNR**
 Landlord: **OPR-DR, MNR-DR, 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 and 55 of the Act.

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

1. An Order of Possession for the 10 Day Notice under sections 46, 55 and 62 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.

No one attended the hearing for the Tenant.

Landlord L.B., support S.W. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding and evidence (Proceeding Package)

The Landlord testified that they did not receive the Tenant's Proceeding Package. The Tenant did not upload documentary evidence confirming that they served the Landlord. Under 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- (e) [Repealed 2023-47-98.]
- (f) by any other means of service provided for in the regulations.

As the Tenant did not serve the Landlord at all with their Proceeding 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.

I find that the Tenant was deemed served with the Landlord's Proceeding Package on October 13, 2024, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Landlord provided the Canada Post tracking numbers for the packages sent to the Tenant.

Service of Amendment

I find that the Tenant was deemed served with the Landlord's amendment on October 15, 2024, by registered mail in accordance with sections 88(c) and 90(a) of the Act, the fifth day after the registered mailing. The Landlord provided the Canada Post customer receipts with tracking numbers for the packages sent to the Tenant.

Preliminary Matter

Monetary amount

Residential Tenancy Branch (RTB) Rules of Procedure 7.12 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 allow the Landlord's amendment as this was clearly rent that the Tenant would have known about and resulted since the Tenant submitted the application. I accept the Landlord's request to amend their original application from \$6,400.00 to \$10,747.00 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 recovery of the application filing fee?

Background and Evidence

I 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 confirmed that this tenancy began as a fixed term tenancy on April 1, 2023. The fixed term ended on March 31, 2024, then the tenancy continued on a month-to-month basis. Monthly rent is \$4,347.00 payable on the first day of each month. A security deposit of \$2,100.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord served the 10 Day Notice to the Tenant by attaching the notice to the Tenant's door, and by leaving a copy of the notice in the Tenant's mailbox on September 28, 2024. The Landlord uploaded a proof of service form #RTB-34 attesting to service of the 10 Day Notice.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$6,400.00 in outstanding rent on September 27, 2024. The effective date of the 10 Day Notice was October 8, 2024.

The Landlord testified that the parties previously agreed to a settlement on September 9, 2024 for the unpaid rent for the rental unit, but the Tenant has not paid what they agreed to pay to the Landlord. The Landlord's support S.W. said that the Tenant paid \$694.00 on September 9, 2024, \$500.00 on September 13, 2024, and \$340.00 on September 20, 2024. These amounts fall short of what the Tenant agreed to pay in the settlement agreement.

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 them to withhold rent. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$10,747.00.

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 RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rule 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.*

Is the Landlord entitled to a Monetary Order and an Order of Possession for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find the Landlord's 10 Day Notice was deemed served on the Tenant on October 1, 2024. I find 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 6, 2024 within 5 days after the date the Tenant received the notice.

The Landlord stated that the Tenant owes \$10,747.00 of unpaid rent. The Landlord testified that the Tenant does not have permission, from the Landlord or an Arbitrator, to withhold rent.

The Tenant applied to dispute the Landlord's 10 Day Notice, but the Tenant did not attend this hearing to provide testimony about the unpaid rent situation. I dismissed the Tenant's application for lack of service of the Proceeding Package on the Landlord.

Based on the undisputed testimony of the Landlord, I find on a balance of probabilities that the 10 Day Notice is valid.

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 under 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 amount under section 55(1.1) of the Act. The total outstanding rent amount is \$10,747.00. RTB Rules of Procedure 7.12 allows me to amend the Landlord's original application amount, and I do so in this decision. Under 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 under section 72(1) of the Act. The Landlord's Monetary Award is calculated as follows:

Item	Amount
Unpaid rent	\$10,747.00
Less security deposit held	-\$2,100.00
Application filing fee	\$100.00
Total monetary award to L:	\$8,747.00

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective two (2) days after service on the Tenant. 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 Supreme Court of British Columbia.

I grant the Landlord a Monetary Order in the amount of \$8,747.00, and 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: November 01, 2024

Residential Tenancy Branch