



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DEVONSHIRE PROPERTIES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPU-DR, MNU-DR, MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlord's 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 and utilities pursuant to Sections 26, 46 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed – holding security deposit pursuant to Sections 38 and 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'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's Agents 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 Agents served the Tenant with the 10 Day Notice on June 21, 2022 by attaching 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 June 24, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord's Agents testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on November 24, 2022 by Canada Post registered mail (the "NoDRP package"). 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 five days after mailing them on November 29, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord's Agents served the first amendment on the Tenant by Canada Post registered mail on January 16, 2023. The Landlord's Agents referred me to the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord's first amendment was deemed served on the Tenant on January 21, 2023 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord's Agents served the second amendment on the Tenant by Canada Post registered mail on March 6, 2023. The Landlord's Agents referred me to the Canada Post registered mail receipt and tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord's second amendment was deemed served on the Tenant on March 11, 2023 pursuant to Sections 88(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, I accept the Landlord's request to amend their

original application from \$2,216.52 to \$21,024.00 (total for unpaid rent and utilities) 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 a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent and utilities?
3. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
4. Is the Landlord entitled to a 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 Agents testified that this tenancy began as a fixed term tenancy on February 1, 2022. The fixed term ended on January 31, 2023, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,142.00 payable on the first day of each month. A security deposit of \$1,050.00 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 \$2,100.00 in outstanding rent on June 1, 2022 and the Tenant owed \$116.52 in outstanding utilities on June 16, 2022. The effective date of the 10 Day Notice was July 4, 2022.

The Landlord testified that they have experienced difficulties collecting rent from the Tenant. The Landlord stated they also required confirmation that the Tenant had created a BC Hydro account. The Landlord has never received confirmation that the Tenant arranged a hydro account for herself.

The Landlord stated they have not received rent from June 2022 to March 2023, except for a \$200.00 deposit on August 26, 2022. After receiving the August 2022 payment, the Landlord issued a receipt to the Tenant stating the payment is for use and occupancy

only and does not reinstate the tenancy. A rent increase of \$42.00 occurred on February 1, 2023. The total outstanding rent is as follows:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
June 2022	\$2,100.00	\$0.00	\$2,100.00
July 2022	\$2,100.00	\$0.00	\$4,200.00
August 2022	\$2,100.00	\$0.00	\$6,300.00
August 26, 2022		\$200.00	\$6,100.00
September 2022	\$2,100.00	\$0.00	\$8,200.00
October 2022	\$2,100.00	\$0.00	\$10,300.00
November 2022	\$2,100.00	\$0.00	\$12,400.00
December 2022	\$2,100.00	\$0.00	\$14,500.00
January 2023	\$2,100.00	\$0.00	\$16,600.00
February 2023	\$2,142.00	\$0.00	\$18,742.00
March 2023	\$2,142.00	\$0.00	\$20,884.00
TOTAL OUTSTANDING RENT:			\$20,884.00

The Landlord also testified that the Tenant has connected to a building electrical outlet as her source of power, as her hydro was cut off before September 10, 2022. Another tenant reported seeing the extension cords plugged into the laundry space's wall outlet and observed that the cords ran into the Tenant's suite. The Landlord is claiming \$140.00 as a chargeback from BC Hydro.

The Landlord reported that the Tenant was having difficulties using their fob in the building lobby door. An angry guest of the Tenant told the assistant property manager that a cloned fob he had stopped working. The Landlord pointed out that clause 31 of the tenancy agreement reads:

31. LOCKS. ... *The tenant must not change locks or other means of access to common areas of the residential property, unless the landlord agrees in writing to the change, or to his rental unit, unless the landlord agrees in writing to, or a Dispute Resolution Officer has ordered, the change.*

The Landlord monitored entrances into the residential property by the Tenant's fob, and they observed entrances by other people in addition to the Tenant. They noted that the Tenant or a guest had put paper debris and aluminum into the lock to prevent the door

from automatically locking. The door lock was repaired by a technician on March 10, 2023 and the replaced part cost \$581.33.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$21,024.00 (total unpaid rent and utilities). The Landlord is also seeking compensation to replace a broken lock in an outside door totalling \$581.33.

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].*

...

- (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.*

The Tenant was deemed served with the 10 Day Notice on June 24, 2022. I find that the 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant did not pay the outstanding rent or apply for dispute resolution within 5 days after receiving the 10 Day Notice. I find that the Landlord's 10 Day Notice is valid and pursuant to Section 68(2)(a) of the Act, I order that the tenancy end date is March 31, 2023.

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 ...

- (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*
 - ...
 - (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
- (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I previously found that the Tenant did not apply to dispute the 10 Day Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective two (2) days after service on the Tenant.

The Landlord is also entitled to a Monetary Order for non-payment of rent pursuant to Section 55(4)(b) of the Act. The total outstanding rent amount is \$21,024.00. 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.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord testified that an exterior door lock had been damaged by the Tenant or guests of the Tenant. The Landlord monitored entrances into the building and observed the Tenant or guests of the Tenant tampering with a door lock. The Landlord alleged that the Tenant breached section 31 of the tenancy agreement. The Landlord had to get the door lock replaced for safety considerations for the whole property. The Landlord claims \$581.33 to cover the cost of a replacement door lock for the building. I find the Landlord has proven this part of their claim on a balance of probabilities, and I grant an award of monetary compensation for the cost of a replacement door lock totalling \$581.33.

Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

Outstanding rent	\$21,024.00
Replacement door lock	\$581.33
Application filing fee	\$100.00
Less security deposit:	-\$1,050.00
TOTAL OWING:	\$20,655.33

Conclusion

The Landlord's 10 Day Notice is upheld, and 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 British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$20,655.33. 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: April 04, 2023

Residential Tenancy Branch