



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, RP, LRE, OLC**

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. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act;
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; and,
4. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord and Support 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 testified that they were not recording this dispute resolution hearing.

The Tenant's application stated the Landlord's 10 Day Notice was attached to her door on January 6, 2023. I find that the Landlord's 10 Day Notice was sufficiently served on the Tenant on January 6, 2023 according to Section 71(2)(b) of the Act.

The Tenant applied for dispute resolution on January 12, 2023. The RTB emailed the Notice of Dispute Resolution Proceeding package for this hearing (the "NoDRP package") to the Tenant on January 18, 2023. The Tenant did not serve the NoDRP package on the Landlord. The Landlord received a courtesy copy of the NoDRP package from the RTB on January 30, 2023. 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 the Tenant's claims related to the rental unit without leave to re-apply.

The Landlord served his evidence on the Tenant by email. The parties do not have a signed form #RTB-51 Address for Service between them. I decline to consider the Landlord's evidence as service has not been proven.

Issue to be Decided

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

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 testified that this tenancy began as a fixed term tenancy on July 1, 2022. The fixed term was to end on June 30, 2023. Monthly rent was \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,000.00 in outstanding rent on January 1, 2023. The effective date of the 10 Day Notice was January 16, 2023.

The Landlord testified in mid January he went down to post a notice that they planned to inspect the rental unit. They noticed that the rental unit was empty, all the doors were open, and the Tenant had left the keys on the counter. The Landlord stated the rental unit was not in good repair.

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 no longer needs an Order of Possession, but they want certainty about the status of the deposits and the unpaid rent amount totalling \$2,000.00.

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 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.*

...

The Landlord's 10 Day Notice was sufficiently served on the Tenant on January 6, 2023. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act.

Based on the undisputed testimony of the Landlord, the Tenant is still in rental arrears in this tenancy, she does not have permission from the Landlord to withhold rent and the Tenant does not have an Arbitrator's Order to withhold rent. I find the Tenant did not dispute the 10 Day Notice in accordance with Section 46(4) of the Act and is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. 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 ...

- (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 due to no service of the Tenant's NoDRP package that the Tenant's application is dismissed without leave to re-apply.

The time for making a dispute resolution application now has expired. The Landlord testified that they no longer require an Order of Possession.

The Landlord is entitled to payment of January 2023's rent pursuant to Section 55(4)(b) of the Act. The total outstanding rent amount is \$2,000.00. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit and pet damage deposit held by the Landlord which will satisfy the total monetary award.

Conclusion

The Tenant's entire application is dismissed without leave to re-apply.

The Landlord is authorized to retain both deposits totalling \$2,000.00 which satisfy the outstanding rent amount owed by the Tenant.

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 28, 2023

Residential Tenancy Branch