



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was originally scheduled to consider the landlord's application (RTB File # 803044) under the *Residential Tenancy Act* (the *Act*). The parties noted that a second hearing was also scheduled for this tenancy on January 30, 2013, to consider the tenant's application to have the landlord's 10 Day Notice to End Tenancy (the 10 Day Notice) cancelled (RTB File 803198). By agreement of both parties at this hearing, I joined the two applications and considered both matters at this hearing. Both parties confirmed that they were prepared to address both applications and that they would not be in any way compromised in their ability to make their cases by proceeding to consider both applications at this hearing.

The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied to cancel the landlord's 10 Day Notice, pursuant to section 46 of the *Act*. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Preliminary Issues – Service of Documents

The landlord testified that he sent the tenant the 10 Day Notice by registered mail the tenant's correct mailing address on December 12, 2012. The tenant confirmed that the mailing address cited by the landlord is correct and that he has routinely received mail at that address during his tenancy. The landlord provided a copy of the Canada Post Tracking Number and Customer Receipt for this registered mailing. The landlord testified that his 10 Day Notice was returned to him as undelivered by Canada Post. The tenant testified that he never received the 10 Day Notice and was unaware of any delivery of notification that registered mail was available for him at the nearest Canada Post facility.

As the landlord's evidence with respect to his mailing of the 10 Day Notice is very important to my consideration of this matter, I have reviewed Canada Post's on-line

tracking records with respect to the landlord's attempted delivery of the 10 Day Notice to the tenant. I find that Canada Post records confirm the landlord's testimony that he sent the package containing the 10 Day Notice on December 12, 2012. Canada Post attempted to deliver this package to the tenant/recipient on December 13, 2012, at which time a delivery card was left for the tenant directing him to a Canada Post outlet in his community where he could retrieve the package and sign for its delivery. A second and final notice was sent to the tenant by Canada Post on December 17, 2012, advising him that he had 10 days to pick up the package or it would be returned to the sender. On January 6, 2013, Canada Post returned the package to the sender. It was successfully delivered to the sender (the landlord) on January 9, 2013.

In accordance with sections 88 and 90 of the *Act*, a 10 Day Notice sent to a tenant by registered mail is deemed to have been served to the tenant on the fifth day after its mailing. As I accept the landlord's evidence that he sent the 10 Day Notice by registered mail, requiring a delivery signature from the tenant to the tenant's mailing address on December 12, 2012, I find that the tenant was deemed served with the 10 Day Notice on December 17, 2012.

The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent to the tenant by registered mail on December 28, 2012 to the same mailing address used in the earlier registered mailing. The landlord confirmed that he has received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail.

I am satisfied that the parties have served one another with all of the above documents and their written evidence package in accordance with the *Act*.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on March 1, 2012. Monthly rent is set at \$1,500.00. The tenant testified that \$750.00 of the monthly rent is payable on the first of each month and \$750.00 is payable on the 15th of each month. Although the tenant paid a \$750.00 security deposit for this tenancy on March 1, 2012, the landlord gave undisputed sworn testimony that he no longer holds any portion of this deposit as it was applied to a portion of the tenant's rent for August 2012.

The landlord's application for a monetary award of \$3,000.00 included unpaid rent of \$1,500.00 for December 2012, and anticipated unpaid rent of \$1,500.00 for January 2013. The tenant did not deny the landlord's assertion that he has not received any payments toward this tenancy for December 2012 or January 2013. The tenant testified that the non-payment of rent has been affected by the landlord's insistence on receiving cash and refusing to accept the tenant's cheques. The landlord testified that he discontinued accepting cheques from the tenant when he received cheques from the tenant that were non-negotiable due to insufficient funds.

The tenant testified that he has tried to pay the landlord the amount owing several times after he received the landlord's dispute resolution hearing package, but the landlord has refused to accept his payments and extend this tenancy. The landlord confirmed that he was interested in obtaining both the unpaid rent and an end to this tenancy based on the 10 Day Notice.

Analysis – Order of Possession

Whether or not the monthly rent was to be paid in two installments or one payment on the first of each month, there is undisputed evidence that \$1,500.00 was owing for December 2012 rent by December 17, 2012, the date when the tenant was deemed to have received the 10 Day Notice. I find that the tenant failed to pay any of the December 2012 rent within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 27, 2012, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. I dismiss the tenant's application to cancel the 10 Day Notice as he was far beyond the date when he could apply for a cancellation of that Notice.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Landlord's Application for a Monetary Award

There is undisputed evidence that there remains \$3,000.00 owing from this tenancy for December 2012 and January 2013. I issued a monetary Order in the landlord's favour in the amount of \$3,000.00 for unpaid rent owing for these two months. As the landlord

has been successful in his application, I find that the landlord is entitled to recover his \$50.00 filing fee for his application from the tenant.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of the Original Order** on the Tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$3,050.00, an amount which allows the landlord to recover unpaid rent for December 2012 and January 2013, and to recover his filing fee from the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with an **Original Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: January 28, 2013

Residential Tenancy Branch

