



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNSD, FF
Tenant: CNR, LRE, LAT, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and orders to restrict the landlord's access to the rental unit. The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the beginning of the hearing the tenant testified that she had not received any evidence from the landlord regarding his Application. The tenant submitted that the landlord had attempted to serve her with his documents personally on February 19, 2013 but that she would not accept them and told him that he must serve them to her by registered mail only.

The tenant submits that she refused this service because the landlord has stated he has served her things in person in the past that she says he has not or has not done so on the date he states. The landlord testified he gave the tenant the documents but that she threw them on the floor and would not take them.

Section 89(1) states that 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 ordinary mail or registered mail to a forwarding address provided by the tenant; or
- e) As ordered by the director under Section 71(1).

As the landlord attempted service in accordance with the *Act*, I find that the tenant's admitted refusal of those documents was a choice she made and she cannot now rely upon this as a reason to exclude the landlord's evidence or Application for this hearing.

The tenant clarified at the outset of the hearing that she no longer requires to recover the filing fee for her Application. As such, I amend the tenant's Application to exclude the matter of recovery of the filing fee.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to an order to suspend or set conditions on the landlord's right to enter the rental unit and change the locks on the rental unit, pursuant to Sections 28, 46, and 70, of the *Act*.

Background and Evidence

The landlord provided the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on May 1, 2012 for a month to month tenancy beginning on May 1, 2012 for a monthly rent of \$525.00 due on the 1st of each month with a security deposit of \$250.00 paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 4, 2013 with an effective vacancy date of January 14, 2013 citing the tenant had failed to pay rent in the amount of \$1,000.00 due on January 1, 2013.

The landlord testified that the tenant had failed to pay October 2012 rent until November; that she did not pay rent for November or December 2012; and that in January 2013 she paid rent for the month of November 2012 but has still failed to pay rent for the months of December 2012 and January 2013.

The landlord testified that he served the tenant with the 10 Day Notice on January 4, 2013 and that this service was witnessed by a third party. The landlord has provided into evidence a Proof of Service document signed by a witness acknowledging the service on January 4, 2013.

The tenant testified that she always pays her rent but that she has, on occasion, failed to pay it on time. The tenant testified that she paid her rent for December 2012 and January 2013.

The tenant submits that she had, however attempted to pay rent for February on February 1, 2013 and the landlord refused to provide her a receipt until she signed a

document related to a fall the tenant suffered on the residential property. Despite repeated attempts to pay the rent in exchange for a receipt the tenant states she did not pay the rent and on February 4, 2013 the landlord issued her the 10 Day Notice.

The tenant submits that she never received a 10 Day Notice to End Tenancy in January 2013 as stated by the landlord but only the Notice she received on February 4, 2013. In support of her statements the tenant has provided copies of several pages of text messages she made to the landlord. These pages do not include any responses, at all, from the landlord.

The parties agree the tenant provide the landlord with a money order on February 7, 2013 in the amount of \$525.00 and that this payment was for rent for the month of February 2013.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the testimony of both parties, I prefer the landlord's testimony over the tenants for the following reasons:

- The tenant has shown, by her own testimony, a proclivity to reject service of documents from the landlord. Specifically in regard to the landlord's attempt to serve her with his hearing documents when she rejected this service;
- I find it to be illogical and unlikely for a landlord to issue a notice that he would have to know is invalid, according to the tenant's testimony, (i.e. for non-payment of rent for the months of December 2012 and January 2013) when he would be able to issue a notice for the non-payment of rent for a period that the tenant acknowledges herself that she had not paid rent for on the day it was due (i.e. February 2013); and
- Despite the provision of many text messages that the tenant submits she provided to the landlord there are absolutely no responses to authenticate that any of these text messages were actually sent to the landlord and as such, I find

they cannot be relied upon as evidence to any events as described the tenant in her testimony.

For these reasons, I accept that the landlord served the tenant with the 10 Day Notice on January 4, 2013 personally as declared by the landlord. I find the notice was received by the tenant on January 4, 2013 and the effective date of the notice was January 14, 2013. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

As the tenant submitted her Application for Dispute Resolution seeking to cancel the notice on February 4, 2013, I also find the tenant failed to apply to cancel the notice within the 5 days granted under Section 46(4) and therefore the tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As such, I dismiss the tenant's Application for Dispute Resolution in its entirety, without leave to reapply.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,050.00** comprised of \$1,000.00 rent owed and the \$50.00 fee paid by the landlord for this application. I order the landlord may deduct the security deposit and interest held in the amount of \$250.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$800.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: February 28, 2013