



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) 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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0952 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard. The landlord was represented by its two agents, ER and MC.

The agent ER testified that the landlord served the tenant with the dispute resolution package on 7 May 2015 by registered mail. The landlord provided me with a Canada Post tracking number. On this basis, I am satisfied that the tenant was deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent ER testified that the landlord served the tenant with the 10 Day Notice on 10 April 2015 by posting it to the tenant's door. The landlord provided me with a witnessed proof of service document. On the basis of this evidence, I am satisfied that the tenant was deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Amendment to Landlord's Application

The agent ER testified that at this date the tenant is current on his rent. The agent ER asked to withdraw the landlord's claim for a monetary order for unpaid rent.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As there is no prejudice to the tenant in allowing the landlord to amend its application in this manner, I allowed the amendment.

Preliminary Issue – Admissibility of Late Evidence

The agent MC testified that he personally served the tenant with the landlord's additional evidence on 6 June 2015 at 1030. This evidence package included a one page submission letter, three receipts issued to the tenant on the basis of "use and occupancy only", an acknowledgment of receiving the receipts, and a rent ledger. The agent MC submits that the tenant had sufficient time to review the documents and that he knowledge of the content of almost all of the documents.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words "not less than", the last day for the landlord to file and serve additional evidence was 3 June 2015.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case the evidence was served three days late and there were only six additional pages of evidence. Further the tenant had actual knowledge of four of the six documents. The tenant had knowledge of the contents of the rent ledger as it merely documents payments he made. The only document the tenant had no knowledge of was the one page submission letter, which is short and contains no complex argument. For these reasons I find that the tenant is not unduly prejudiced by admitting the landlord's late evidence and that he had time to respond. Accordingly, I allow this evidence to be admitted.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agents, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenant began occupying the rental unit approximately two or three years ago. Monthly rent of \$590.00 is due on the first. There is no written tenancy agreement.

On 10 April 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 10 April 2015 and set out an effective date of 20 April 2015. The 10 Day Notice set out that the tenant failed to pay \$590.00 in rent that was due on 1 April 2015.

The agent ER testified that the tenant has made three payments since the issuance of the 10 Day Notice:

- In respect of April's rent, payment in the amount of \$610.00 was received on 12 May 2015 (the receipt indicates \$20.00 was returned to the tenant);
- In respect of May's rent, payment in the amount of \$590.00 was received on 12 May 2015;
- In respect of June's rent, payment in the amount of \$590.00 was received on or after 6 June 2015.

The landlord issued receipts to the tenant that the payments were received on the basis of "use and occupancy only".

The agents each testified that to their knowledge there are no prior orders of this Branch in respect of this tenancy, the tenant is not entitled to deduct any amount from rent, and the landlord has not reinstated the tenancy.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 23 April 2015, the corrected effective date of the 10 Day Notice. As that has not occurred, I find that the landlord is entitled to an order of possession. The tenant has paid for his use and occupancy of the rental for June. As such, the landlord is entitled to an order of possession dated 30 June 2015.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$50.00. The landlord is provided with this order and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession effective 30 June 2015. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 18, 2015

Residential Tenancy Branch