



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: CNR, AAT, MNDC, MNSD, OLC, PSF, FF
Landlord: MNR, OPR, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties.

The tenant filed their application June 05, 2015 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order: compensation for loss – Section 67
2. Allow access to the unit – Section 70
3. To cancel the landlord's Notice to End for Unpaid Rent – Section 46
4. Repairs to the unit – Section 62
5. Provide services or facilities – Section 65
6. Return of part of security deposit – Section 19(2) / 38
7. For landlord to comply with the Act – Section 62
8. An Order to recover the filing fee for this application - Section 72

The landlord filed their application June 06, 2015 pursuant to the *Residential Tenancy Act* (the Act), for Orders as follows:

1. An Order of Possession for unpaid rent – Section 55
2. A Monetary Order for unpaid rent - Section 67
3. To retain the security deposit – Section 38
4. An Order to recover the filing fee for this application - Section 72

The tenant was provided with a copy of the Notice of a Dispute Resolution Hearing after filing their application dated June 05, 2015. The tenant, however, did not attend the hearing set for today at 11:00 a.m. The phone line remained open for the duration of the hearing and was monitored for the full period.

The only party to call into the hearing was the landlord's representative / agent. The agent stated they filed the landlord's application in early June 2015. They acknowledged picking up their Notice of Hearing documents 2 weeks after their

available date of June 10, 2015 and upon having been reminded to so by the Branch; and, testified they ultimately sent the Notice of Hearing by regular mail but were uncertain as to when they did so. The landlord's agent further acknowledged they did not read instructions provided with their Notice of Hearing and were additionally unclear they were required to provide the tenant with a copy of their application for dispute resolution.

The landlord's agent claims not to have received an application by the tenant; and was attending the hearing in respect to their own application.

I am satisfied the tenant filed their application and did not attend the hearing to support their application; and as a result I must preliminarily **dismiss** the tenant's application, without leave to reapply.

I am not satisfied the landlord properly served the tenant with their Notice of Hearing package as instructed in accordance with Section 89(2) of the Act - by sending the Notice of Hearing document to the tenant by regular mail. Section 89(2) does not prescribe service by regular mail as a valid method for service. Regardless, I am further not satisfied the landlord provided the tenant with their application. As a result, I must preliminarily **dismiss** the landlord's application, with leave to reapply.

At the outset of the hearing the landlord orally confirmed they sought, in part, an Order of Possession as the tenant had not paid rent for 3 months and as of the previous week it appeared the unit was still occupied.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy agreement provided by the landlord states the tenancy began April 15, 2015. At the outset of the tenancy agreement the landlord received a security deposit and that rent in the amount of \$1750.00 is payable in advance on the first day of each month.

The landlord claims they gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on June 01, 2015 as the tenant refused to pay all of the rent owed - disputing they had to pay all of the rent. I do not have benefit of a copy of the 10 Day Notice or its particulars, and the landlord claims not to have kept a copy. None the less, the landlord is claiming there is outstanding rent now for 3 months, since issuing the notice.

Analysis

The tenant has failed to appear for a scheduled Dispute Resolution hearing and as a result their application, inclusive to set aside a 10 Day Notice to End Tenancy for Unpaid Rent, has been **dismissed**, without leave to reapply. Section 55 of the *Act* provides that if a tenant's application to dispute a 10 Day Notice to End Tenancy is dismissed, and the landlord makes an oral request for an Order of Possession, then the Director must grant the Order of Possession of the rental unit to the landlord. The landlord did make an oral request for an Order of Possession to the rental unit. Therefore, as prescribed by Section 55(1) of the *Act*, I grant the landlord's request for an Order of Possession.

Conclusion

The application of the tenant has been dismissed, without leave to reapply.
The application of the landlord has been dismissed, with leave to reapply.

I grant the landlord an Order of Possession effective **two (2) days** after it has been served upon the tenant. If the landlord serves the tenant with the Order and the tenant fails to comply with the Order, it may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: July 29, 2015

Residential Tenancy Branch