



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR MNDC O FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Landlord's Application and Monetary Order Worksheet I have determined that I will not deal with all the dispute issues the Landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy for unpaid rent and utilities.

Based on the above, I will deal with the Landlord's request for an Order of Possession for unpaid rent or utilities and the request for a Monetary Order of unpaid rent or utilities, and I dismiss the balance of the Landlord's claim for damages and for other reasons, with leave to re-apply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 29, 2015, by the Landlord to obtain an Order of Possession for unpaid rent and utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on June 3, 2015. Canada Post tracking information confirms that Canada Post attempted delivery of the package on June 5, 2015 and that a notice card was left that date to advise the Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on June 28, 2015 that the registered mail was available for pick up.

As of July 2, 2015 the Canada Post tracking information confirms that the Tenant still did not pick up the registered mail and the package was returned to the Landlord. The Landlord asserted that the Tenant simply refuses to pick up his registered mail, refuses to answer his calls or his door and is completely avoiding the Landlord.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the above, I find that the Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Tenant to avoid service. Therefore, I find the Tenant was deemed served with Notice of this hearing and with the Landlord's evidence on June 8, 2015, pursuant to section 90 *Act*. Accordingly, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord testified that the Tenant has occupied the rental unit for over 20 years based on a verbal tenancy agreement. Rent of \$525.00 was payable on the first of each month and no security deposit was required to be paid.

The Landlord submitted that he had attended dispute resolution on April 29, 2015 and was issued a Decision which awarded him monetary compensation of \$3,825.00 for unpaid rent up to April 30, 2015. The file number of that Decision is listed on the front page of this Decision. The Landlord said he was advised during the April 2015 hearing that he had not served the Tenant with a valid eviction notice so on May 15, 2015 he served the Tenant a 10 Day Notice via registered mail. Canada Post receipts were submitted in his evidence.

The Landlord asserted that the 10 Day Notice was signed on May 3, 2015 and listed April and May 2015 rent of \$1,050.00 (2 x \$525.00) plus \$252.06 in unpaid utilities, as per the copy of the Notice provided in evidence. The Landlord testified that on July 6, 2015 the Tenant deposited a partial payment of \$5,500.00 into his bank account. Based on the Landlord's calculation the Tenant still owes him \$677.06 which is comprised of

the first monetary order of \$3,25.00 + \$1,050.00 for April and May on the 10 Day Notice, + \$252.06 utilities + \$ 525.00 June rent + \$525.00 July rent.

The Landlord stated that he is still seeking the possession of the rental unit and the money owed to him for rent and utilities.

In support of his application the Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts dated June 3, 2015, and May 14, 2015; a 10 Day Notice dated May 3, 2015; and natural gas utility invoices.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on May 19, 2015 five days after it was mailed and the effective date of the Notice was **May 29, 2015**.

The Tenant neither paid the rent in full nor disputed the Notice within the required five day period. Therefore, the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **May 29, 2015**, and **must** vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

On May 29, 2015 the Landlord filed his Application for Dispute Resolution which was a clear indication of the Landlord's intent to seek possession of the rental unit plus payment for unpaid utilities and rent. The Tenant made a partial payment to the Landlord when he deposited \$5,500.00 into the Landlord's bank account on July 7, 2015.

The Landlord claimed unpaid rent of \$1,050.00 that was due May 1, 2015, in accordance with section 26 of the *Act* which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, the Tenant's \$5,500.00 payment would have been applied to the previous monetary order issued April 29, 2015 for \$3,825.00 leaving a prepaid balance of \$1,675.00.

The previous monetary order included rent up to April 30, 2015; therefore, the application before me cannot award money for April rent. Accordingly I grant the Landlord compensation for May 2015 rent. The Landlord is ordered to deduct the money owed for May 2015 rent of \$525.00 plus the outstanding utilities of \$252.06 against the prepaid balance leaving a prepaid balance of \$897.94.

As noted above this tenancy ended **May 29, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for June and July 2015. The Landlord will not regain possession of the

unit until after service of the Order of Possession and will have to find a new tenant; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of June and July 2015, in the amount of \$1,050.00 (2 x \$525.00). When applied to the prepaid balance of \$897.94 the amount owed to the Landlord is **\$152.06** (\$1,050.00 - \$897.94).

If the Landlord suffers additional loss they are at liberty to file another application to recover such loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord has been successful with his application and has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order for **\$202.06** (\$152.06 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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: July 16, 2015

Residential Tenancy Branch

