



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILLIAMS LAKE SOCIAL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, CNR,RR, O

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). 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 her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on September 23, 2015 and has confirmed that the tenant received the package by signing for it on September 25, 2015. The landlord provided the Canada Post Customer Receipt Tracking number in her direct testimony as confirmation. Based upon the

undisputed affirmed testimony of the landlord, I find that the tenant has been properly served as per section 88 and 89 of the Act.

The landlord stated that she was aware of and understood the tenant's application for dispute resolution as she was served with the tenant's notice of hearing package.

These matters were set for a conference call hearing at 9:00 a.m. on this date. Both parties failed to attend the hearing by way of conference call. I waited until 15 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant and in the absence of the tenant's participation in this hearing, I order the tenant's application is dismissed without leave to reapply as the landlord has attended in response to the tenant's application.

The hearing proceeded on the landlord's application only.

At this time, the landlord indicated that the tenant had vacated the rental unit on September 19, 2015 and that an order of possession was no longer required as the landlord has had possession of the rental premises since September 19, 2015. As such, no further action is required for the landlord's request for an order of possession.

During the hearing the landlord also provided a new mailing address provided to her by the tenant. As such, the tenant's file shall be updated with the new mailing address.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

This tenancy began on October 15, 2010 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated October 13, 2010. The monthly rent was \$740.00 payable on the 1st day of each month.

The landlord provided direct testimony that a \$262.50 security deposit was paid, but not noted on the signed tenancy agreement.

The landlord stated that the tenant was served with the 10 Day Notice dated September 3, 2015 by posting it to the rental unit door on September 3, 2015. The 10 Day Notice indicates that the tenant failed to pay rent of \$1,238.00 that was due on September 1, 2015 and that there is an effective end of tenancy date of September 17, 2015.

The landlord provided direct testimony that no rent was paid within the allowed 5 day period nor has any rent been paid since the 10 Day Notice dated September 3, 2015 was served as of the date of this hearing.

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 landlord provided undisputed affirmed testimony that the tenant failed to pay rent for September 2015.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued September 3, 2015 is valid.

Based upon the undisputed affirmed testimony of the landlord, I find that the landlord has proven that the tenant failed to pay rent for September 2015 and has established a claim for unpaid rent of \$1,238.00.

The landlord testified that she continued to hold the tenant's \$262.50 security deposit, plus interest, paid in October 2010. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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 \$1,025.50 under the following terms:

Item	Amount
Unpaid September Rent	\$1,238.00
Recover Filing Fee	50.00
Offset Security Deposit	-262.50
Total Monetary Order	\$1,025.50

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order 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: October 22, 2015

Residential Tenancy Branch

