



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLAYTON 21 LAND CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF; CNR

Introduction

This hearing dealt with the landlord company's application pursuant to the *Residential Tenancy Act* ("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 the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application against both landlords pursuant to the *Act* for:

- cancellation of the landlord company's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 23, 2016 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The individual landlord PG ("landlord") named in the tenant's application only, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to speak on behalf of the "landlord company" named in both applications, as an agent at this hearing.

The landlord testified that the tenant was served with the landlord company's application for dispute resolution hearing package on July 27, 2016, by way of posting to the tenant's rental unit door. The landlord said that even though the landlord company filed its application on July 5, 2016 and the notice of hearing is dated for July 8, 2016, he did not receive a copy from the Residential Tenancy Branch ("RTB") and he requested another copy be faxed to him, which was done on July 27, 2016. The landlord said that he served the tenant immediately with the application when he received it from the RTB. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord company's application on July 30, 2016, three days after its posting.

The landlord testified that the tenant was served with the landlord company's 10 Day Notice on June 23, 2016, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord company's 10 Day Notice on June 26, 2016, three days after its posting.

Preliminary Issue – Dismissal of Landlord Company's Monetary Application

At the outset of the hearing, I advised the landlord that I could not hear the landlord company's application for a monetary order for unpaid rent. The landlord company is not permitted to serve its application for a monetary order by way of posting to the rental unit door as per section 89(2) of the *Act*, as that can only be done for an order of possession application. I notified the landlord that he had to follow section 89(1) of the *Act* to serve a monetary application. Accordingly, I advised the landlord that the landlord company's application for a monetary order for unpaid rent, was dismissed with leave to reapply.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's application dismissed without leave to reapply.

Issues to be Decided

Is the landlord company entitled to an order of possession for unpaid rent?

Is the landlord company entitled to recover the filing fee for its application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2015. Monthly rent in the amount of \$1,200.00 is payable on the first

day of each month. No security deposit was paid to the landlord company. This was a verbal tenancy, as no written tenancy agreement was signed. The tenant continues to reside in the rental unit.

The landlord company seeks an order of possession based on the 10 Day Notice. The notice indicates an effective move-out date of July 4, 2016. The notice states that rent of \$8,400.00 was due on June 1, 2016. The landlord noted that rent was unpaid from December 2015 to June 2016, which totals \$8,400.00. The landlord stated that the tenant has failed to pay any rent for this entire tenancy from December 2015 to August 2016.

The landlord company also seeks to recover the \$100.00 filing fee paid for its application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant's application pursuant to section 46(4) of the *Act* was made on July 13, 2016, more than five days after the deemed receipt of the notice and beyond the corrected effective date of the notice. The tenant did not attend this hearing to present his application.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on July 6, 2016, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by July 6, 2016. As this has not occurred, I find that the landlord company is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord company's 10 Day Notice complies with section 52 of the *Act*.

As the landlord company did not proceed with its entire Application, I find that it is not entitled to recover the \$100.00 filing fee paid for its Application.

Conclusion

I grant an Order of Possession to the landlord company effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with

this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord company's application for a monetary order for unpaid rent is dismissed with leave to reapply.

The landlord company's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

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: August 23, 2016

Residential Tenancy Branch