



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent, RS ('landlord'), testified on behalf of the landlord and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the 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

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated February 13, 2017, with an effective date of February 23, 2017, by posting the 10 Day Notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on February 16, 2017, three days after posting.

The landlord testified that the hearing package was served to the tenant on February 27, 2017 by posting to the tenant's door.

Preliminary Issue - Service of the 10 Day Notice

The landlord testified during the hearing that the landlord's Application for Dispute Resolution was served to the tenant on February 27, 2017.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

In this case the landlord served the tenant by attaching a copy of the application to the tenant's door. On a balance of probabilities, I find that the tenant was served with the landlord's Application at the address at which she resides, as required by section 89 (2)(d) of the *Act*. I do, however, note that the service of the application does not comply with section 89 (1) of the *Act*, and as such I can only deal with the landlord's application for an Order of Possession, and I dismiss, with leave to re-apply, all aspects of the landlord's application for a monetary award.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy started in December of 2015, with rent currently set at \$1,050.00 per month, payable on the first of the month. The landlord collected a security deposit in the amount of \$550.00, and continues to hold it. This rental suite is a basement suite, where the landlord resides on the upper floor.

The landlord issued the 10 Day Notice on February 13, 2017 as the tenant owed money in outstanding rent. \$190.00 was, and is still outstanding for February 2017 rent, and the tenant has not paid rent for March 2017. The landlord is seeking an Order of Possession for the unpaid rent.

Analysis

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the landlord's testimony that the tenant did not pay rent in the amount of \$190.00 for the month of February 2017, and \$1,050.00 for the month of March 2017. Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid

rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file her application for dispute resolution within the five days of service granted under section 46(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 26, 2017.

In this case, this required the tenant and anyone on the premises to vacate the premises by February 26, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Conclusion

The landlord's application, in part, is allowed. I find that the landlord's 10 day Notice is valid and effective as of February 26, 2017.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement 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's application to retain the tenant's security deposit in partial satisfaction of the unpaid rent, and to recover the filing fee, is **dismissed with 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: March 27, 2017

Residential Tenancy Branch