



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELIZABETH MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR; MT, CNR, ERP, RP, PSF

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; and
- a monetary order for unpaid rent, pursuant to section 67.

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 13, 2017 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- orders requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33; and
- an order requiring the landlord to provide services and facilities required by law, pursuant to section 65.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord's agent, RG ("landlord") 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 is the property manager for the landlord company named in this application and that he had authority to represent it as an agent at this hearing.

The hearing began at 9:30 a.m. Three witnesses appeared on behalf of the landlord at this hearing, to provide testimony regarding service of documents. The witnesses only provided limited testimony and did not participate in the remainder of the proceedings with the landlord. "Witness MWN" and "witness YG" were called in to testify in the same

room as the landlord. "Witness KV" called in separately and testified from approximately 9:42 to 9:43 a.m.

The landlord confirmed that he was told by the Residential Tenancy Branch ("RTB") that the tenant had filed an application for dispute resolution in order to dispute the landlord's 10 Day Notice, so the landlord could not proceed with its direct request application. The landlord testified that he originally filed an application for dispute resolution by direct request. A direct request proceeding is an ex-parte hearing where only the landlord's paper submissions are considered, there is no participatory hearing or opportunity for the tenant to submit written evidence. The landlord said that his direct request application was scheduled for a participatory hearing because the tenant had already filed his application.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on April 24, 2017. Witness MWN confirmed that he personally served the tenant and witness YG confirmed that he witnessed this service. Both witnesses provided a signed, written statement to confirm service. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's application on April 24, 2017.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on April 13, 2017, by way of posting to his rental unit door. Witness YG testified that he posted the notice and witness KV testified that he witnessed this posting. Both witnesses provided a signed, written proof of service. The tenant also applied to dispute this notice in his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on April 16, 2017, three days after its posting.

Preliminary Issue - Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include May 2017 rent of \$640.00. The landlord filed an amendment form on May 3, 2017 and testified that he served it to the tenant by way of registered mail on May 4, 2017. The landlord provided a Canada Post receipt and tracking number to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's amendment on May 9, 2017, five days after its registered mailing.

The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him

to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing, and he is deemed served with the landlord's amendment form.

The landlord claimed that he wanted to seek late fees from the tenant for paying rent late. However, the landlord did not include this information in his application or his amendment. Therefore, I informed the landlord that I could not deal with the late fees at this hearing.

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 entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on December 1, 2016 for a fixed term of one year. Monthly rent in the amount of \$640.00 is payable on

the first day of each month. A security deposit of \$320.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent. He explained that the tenant made a partial cash rent payment of \$460.00 on April 7, 2017. He claimed that the tenant was immediately given a rent receipt indicating that the above payment was being accepted "for use and occupancy only." The landlord provided a copy of the receipt. He confirmed that he issued the 10 Day Notice for unpaid rent of \$180.00, due on April 1, 2017, after the above partial rent payment was made by the tenant. The landlord testified that the tenant also failed to pay full rent of \$640.00 for May 2017.

The landlord seeks a monetary order of \$820.00 for unpaid rent from April to May 2017, inclusive.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on April 1, 2017, within five days of being deemed to have received the 10 Day Notice. The tenant filed an application to dispute the notice on April 20, 2017, pursuant to section 46(4) of the *Act*, beyond the five day time limit. The tenant did not appear at this hearing in order to provide evidence. 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 April 26, 2017, 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 April 26, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$180.00 for April 2017 and \$640.00 for May 2017. Therefore, I find that the landlord is entitled to \$820.00 in unpaid rent from the tenant.

The landlord continues to hold the tenant's security deposit of \$320.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$320.00 in partial satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord 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.

I issue a monetary order in the landlord's favour in the amount of \$500.00 against the tenant. 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 an Order of that Court.

I order the landlord to retain the tenant's entire security deposit of \$320.00 in partial satisfaction of the monetary award.

The tenant's entire 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: May 26, 2017

Residential Tenancy Branch