



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, CNR

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 25, 2017 ("1 Month Notice"), pursuant to section 47; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 4, 2017 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The 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 she is owner of the rental unit.

The landlord testified that she received the tenant's application for dispute resolution hearing package as well as an amendment to the application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment.

The landlord testified that she served the tenant with her written evidence package by way of leaving it on a counter inside the tenant's rental unit. She could not recall the date of service. As the landlord could not provide a date and she did not serve the tenant in accordance with section 88 of the *Act*, I find that the tenant was not served with the landlord's written evidence. I notified the landlord that I could not consider her evidence at this hearing, except for the 10 Day Notice and the 1 Month Notice that were served by other methods, as noted below.

The landlord testified that the tenant was personally served with the landlord's 10 Day Notice on April 4, 2017. The landlord provided a proof of service where the tenant signed confirming hand delivery of the notice. In accordance with section 88 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on April 4, 2017. The tenant also applied to dispute the notice at this hearing.

The landlord testified that the tenant was served with the landlord's 1 Month Notice on March 25, 2017 by way of posting to her rental unit door. The notice indicates an effective move-out date of April 30, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on March 28, 2017, three days after its posting. The tenant also applied to dispute the notice at this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include the relief of cancelling the 10 Day Notice, as the tenant filed an amendment to her application on April 7, 2017 and the landlord confirmed receipt of this amendment, as noted above.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *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 notices to end tenancy, the landlord is entitled to an order of possession, provided that the notices meet the requirements of section 52 of the *Act*.

Issue to be Decided

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

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on February 16, 2016. Monthly rent in the amount of \$2,350.00 is payable on the first day of each month. A security deposit of \$1,175.00 and a pet damage deposit of \$1,175.00 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The landlord issued the 10 Day Notice for unpaid rent of \$2,350.00 due on April 1, 2017. The notice indicates an effective move-out date of April 16, 2017. The landlord testified that the tenant failed to pay rent of \$2,350.00 for April 2017.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent due on April 1, 2017, within five days of receiving the 10 Day Notice. The tenant amended her application to dispute the 10 Day Notice, pursuant to section 46(4) of the *Act*. The tenant filed her amendment on April 7, 2017, within five days of receiving the 10 Day Notice; however, she did not appear at this hearing to present her submissions. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent, led to the end of this tenancy on April 16, 2017, the 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 16, 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*.

As I have granted the order of possession based on the 10 Day notice, I do not need to examine the 1 Month Notice.

The landlord confirmed that she filed an application for an order of possession for cause and unpaid rent, as well as monetary orders. She confirmed that she had a future hearing scheduled for May 31, 2017 at 11:00 a.m. The file number for the future hearing appears on the front page of this decision. I notified the landlord about my decision to grant the order of possession during the hearing and advised her to notify the Arbitrator about my decision at the future hearing on May 31, 2017. I notified the landlord that she would still be required to attend the future hearing in order to deal with her monetary claims against the tenant because that application was not before me at this hearing.

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.

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 09, 2017

Residential Tenancy Branch