



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR FF CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on August 1, 2011 and the monthly rent is \$1130.00 payable on the 1st day of each month. Effective August 1, 2017, the rent was increased to \$1170.00. The tenant paid a security deposit of \$550.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$1130.00 rent payable on July 1, 2017. The landlord testified that on July 15, 2017 the 10 Day Notice was served to the tenant

by registered mail. The landlord provided a registered mail receipt and tracking report in support of service. The landlord testified that as per the tracking report, delivery was attempted and a notice card was left for the tenant on July 19, 2017. The landlord argues the tenant was deemed served on July 20, 2017.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice. The landlord argues rent should have been paid by July 25, 2017 which is within 5 days of the 10 Day Notice being served. The landlord testified the tenant paid the rent in full by cheque on July 26, 2017. The tenant was issued a receipt for use and occupancy only. The landlord argues the tenant did not pay or file for dispute resolution within the timelines permitted under the Act.

The tenant submits she has never been late or missed a rent payment during her 4 year tenancy. The July 2017 rent cheque was returned NSF as it was not issued from her primary account and her secondary account fell short \$20.00. The tenant argues she was not notified by the landlord of the NSF cheque. She became aware herself on July 24, 2017 when she noticed the cheque had not been cashed. She contacted the landlord but did not hear back until July 26, 2017. She immediately replaced the cheque. She did not collect the registered mail letter until July 26, 2017. In either event, the tenant argues that the 10 Day Notice was not available for pick up at the Post Office until July 21, 2017. The tenant submits that she was away when the initial delivery of the 10 Day Notice was attempted and she did not return home until after the following weekend.

The tenant's application was also filed on July 26, 2017, the same day the outstanding rent was paid.

Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on July 20, 2017, five days after its mailing, pursuant to section 88 & 90 of the Act. In accordance with this section of the Act, an item is deemed served five days after it is mailed. The date the item was available for pick-up after at the Post Office, after delivery was attempted, is not the relevant date. The deemed service provisions of the Act are rebuttable; however, I find the tenant provided insufficient evidence in support of her claim that she was "away" for a number of days at the time of the attempted delivery of the registered mail package. Further, had the tenant collected the registered mail package by July 21, 2017, when it was available for pick-up at the Post Office, the

tenant still would have had four days remaining on the five day Notice period to pay the outstanding rent.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

As the tenant was deemed to have been served with the 10 Day Notice on July 20, 2017, the five day deadline to pay or file a dispute expired on July 25, 2017. The tenant paid the outstanding rent and filed the application on July 26, 2017.

I find the tenant failed to file an application for dispute resolution or pay the full amount of the arrears within the five day time limit permitted under the Act. I find the tenant's application to cancel the 10 Day Notice must be dismissed.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold a security deposit of \$550.00. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 23, 2017

Residential Tenancy Branch