



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, O
 MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), an order for the Landlord to make repairs to the unit, site, or property, and other remedies.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent and the recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord’s Application. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord testified on October 10, 2017, the Application, the Notice of Hearing, and their evidence package were personally served on the Tenant in the presence of a witness. As a result, I find that the Tenant was served the Application, the Notice of Hearing, and the Landlord’s evidence on October 10, 2017, the date the documents were personally served on them.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

The Landlord testified that since the time they filed their Application, the amount of money owing for rent has increased. The Landlord therefore requested to amend their Application to include additional rent owing since the time the Application was filed. The Landlord also requested that they be allowed to retain the security deposit paid by the Tenant to offset any monetary amounts owed by the Tenant to the Landlord. The Rules of Procedure state under section 4.2 that the Application may be amended at the hearing in circumstances that can reasonably be anticipated. As a result I have amended the Landlord's Application to include additional rent owing since the time the Application was filed, and the retention of the security deposit to offset any monetary amounts owed by the Tenant.

As the Tenant did not appear at the hearing to proceed with their Application or to present any evidence or testimony for consideration, the Tenant's Application is dismissed. The hearing proceeded based on the Landlord's Application and Section 55 of the *Act*.

Issue(s) to be Decided

If the Tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began July 1, 2017, and that rent in the amount of \$600.00 is due on the first day of each month, which includes hydro. The Landlord testified that a \$300.00 security deposit was paid by the Tenant, which they still hold, and submitted a copy of the tenancy agreement and hydro agreement in support of their testimony.

The Landlord testified that when rent was not paid as required on September 1, 2017, a 10 Day Notice was served on the Tenant. The Landlord testified that on September 5,

2017, served a 10 Day Notice using an outdated form. The Landlord stated that this 10 Day Notice was also missing critical information. The Landlord testified that when they recognized the deficiencies in the original 10 Day Notice, they served a new 10 Day Notice on the Tenant, dated September 19, 2017. A copy of this 10 Day Notice was submitted by the Landlord for my consideration.

The 10 Day Notice dated September 19, 2017, has an effective vacancy date of September 29, 2017, and indicates that as of September 1, 2017, the Tenant owed \$600.00 in outstanding rent. The Landlord stated that the 10 Day Notice was posted to the door of the Tenant's rental unit on September 19, 2017, and submitted a witnessed and signed Proof of Service Notice to End Tenancy indicating that the 10 Day Notice was served in the manner described above.

The Landlord testified that since the 10 Day Notice was posted to the Tenant's door on September 19, 2017, the Tenant has not paid any rent. As a result, the Landlord stated that the Tenant currently owes \$1,800.00 in rent for September-November, 2017.

Analysis

Although the Tenant filed an Application seeking to cancel a 10 Day Notice within the five day period, the Tenant did not appear at the hearing to present evidence in support of their Application. As the Landlord, who is the respondent named in the Tenant's Application, appeared at the hearing, the Tenant's Application is dismissed without leave to reapply. I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with Section 52 of the *Act*.

Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the above, I must now turn my mind to whether the 10 Day Notice issued by the Landlord complies with section 52 of the *Act* which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice submitted by the Landlord is signed and dated, gives the address of the rental unit to which the 10 Day Notice applies, states the effective date of the 10 Day Notice, and is in the approved form. As a result, I find that the 10 Day Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*.

Based on the undisputed oral testimony of the Landlord, I find that the Tenant owes \$1,200.00 in unpaid rent for September – October, 2017. However, as the hearing was convened by telephone conference at 1:30 pm on November 1, 2017, the day in the month upon which rent is due under the tenancy agreement, I find that the Landlord's Application for unpaid rent for November, 2017 is premature. As a result, I dismiss the Landlord's claim for November rent with leave to reapply.

Pursuant to section 72 of the Act, I also find that the Landlord is entitled to recover the \$100.00 filing fee and to retain, in full, the \$300.00 security deposit paid by the Tenant. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$1,000.00; \$1,200.00 in back owed rent, plus \$100.00 for the recovery of the filing fee, less the \$300.00 security deposit paid by the Tenant and held by the Landlord.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Supreme Court of British Columbia and enforced as an Order of the that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,000.00. The Landlord is provided with this Order in the above terms and 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. The Landlord has leave to apply for November rent.

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: November 3, 2017

Residential Tenancy Branch