



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FF, MNDC, MNR, OLC, RP, RR (Tenant's Application)
OPR, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application, filed on February 20, 2018, the Tenant sought the following orders:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on February 15, 2018 (the "Notice");
- an Order that the Landlord make repairs to the rental unit, emergency and otherwise;
- an Order permitting the Tenant to deduct the cost of repairs, services or facilities from the rent;
- an Order that the Landlord comply with the *Residential Tenancy Agreement*, the *Regulation*, or the tenancy agreement;
- a Monetary Order from the Landlord for the cost of emergency repairs; and,
- to recover the filing fee.

In the Landlord's Application for Dispute Resolution, filed February 26, 2018, she requested an Order of Possession and monetary compensation based on the Notice and recovery of the filing fee.

The hearing was conducted by teleconference at 10:30 a.m. on March 26, 2018. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she served the Tenant with the Notice of Hearing and her Application on March 2, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of March 7, 2018 and I proceeded with the hearing in their absence.

Preliminary Matter—Tenant's Application

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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.

As the Tenant did not call into the hearing by 10:47 a.m., and the Landlord appeared and was ready to proceed, I dismiss the Tenant's claim without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and Monetary Order based on the Notice?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began November 2, 2017. Monthly rent is payable in the amount of \$2,700.00 on the first of the month. The Tenant paid a security deposit in the amount of \$500.00.

The Landlord stated that the Tenant failed to pay the full amount of rent for February 2018 such that the sum of \$1,050.00 was outstanding.

The Landlord issued the Notice on February 15, 2018 by posting to the rental unit door. The Notice informed the Tenant that the Notice would be cancelled if the Tenant paid the outstanding rent within five days of service. The Notice also informed the Tenant that she had five days in which to apply to dispute the Notice.

The Tenant applied for dispute resolution on February 20, 2018, although she failed to attend the hearing.

The Landlord testified that the Tenant also failed to pay rent for March 2018, such that the sum of \$3,850.00 was outstanding as of the date of the hearing.

Analysis

Based on the undisputed testimony and evidence of the Landlord and on a balance of probabilities I find as follows.

The Tenant failed to attend the hearing and her application to cancel the Notice is dismissed. Pursuant to section 55 of the *Residential Tenancy Act*, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. Should the Tenant fail to move from the rental unit the Landlord may file and enforce the Order of Possession in the B.C. Supreme Court.

I accept the Landlord's undisputed testimony that the Tenant failed to pay rent as required by the tenancy agreement. I further accept her testimony that as of the date of the hearing the sum of \$3,850.00 was outstanding for rent. Pursuant to section 26 of

the *Act*, a Tenant must pay rent when due; as such, I find the Landlord is also entitled to a Monetary Order in the amount of \$3,950.00 which includes the outstanding rent and recover of the filing fee. The Landlord must serve the Monetary Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord is granted an Order of Possession and a Monetary Order in the amount of **\$3,950.00** for unpaid rent and recovery of the filing fee.

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 26, 2018

Residential Tenancy Branch