



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, MT, CNR, RP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord claims that the tenant was served with her notice of hearing package via Canada Post Registered Mail on February 6, 2018 and has submitted a copy of the Canada Post Customer Receipt Tracking Label as confirmation. The tenant disputed that she did not receive the notice, but clarified that it could have been mixed in with other mail in her mailbox. The tenant stated that unless it was an envelope from Canada Revenue Agency, she would normally ignore them. The tenant claims that the landlord was served with the notice of hearing package via Canada Post Registered Mail on February 2, 2018. The landlord confirmed receipt of the package on February 6, 2018, but stated that it was sent via regular post. The landlord stated that her amendment to the application was dispute file don February 7, 2018 was served to the tenant via Canada Post Registered Mail on February 7, 2018 and has submitted a copy of the Canada Post Customer Receipt Tracking Label as confirmation. The tenant disputed receiving the amendment, but clarified again that it could have been mixed in with other mail in the mailbox which she would not pay attention to. I accept the undisputed affirmed evidence of both parties and find that both parties have been

sufficiently served with the notice of hearing package as per section 90 of the Act. Neither party raised any issues for service.

Preliminary Issue(s)

Is the tenant entitled to more time to make an application to cancel the 10 Day Notice? The tenant stated that the 10 Day Notice was not delivered to herself, but was given to someone living temporarily with her. The tenant stated that she did not get the notice until February 1, 2018 when it was found amongst some recycling from this person. The tenant seeks an additional 5 days to pay the rent. It was clarified with both parties that a request for more time to make an application does not extend any applicable limitation periods, only the applicants right to dispute the 10 Day Notice. Both parties confirmed that the tenant has not paid any rent since the 10 Day Notice was served on January 24, 2018. I find that the tenant's request for more time to cancel the 10 Day Notice is without merit. I find that the tenant was properly served with the 10 Day Notice as both parties confirmed that it was signed for by the tenant's guest on January 24, 2018, but that the tenant's guest failed to notify the tenant. For these purposes, I find that the tenant was properly served as per section 88 of the Act. As such, the tenant's request for more time is dismissed.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order for repairs?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on May 15, 2017 on a fixed term tenancy ending on May 15, 2018 and then thereafter on a month-to-month basis as per the signed tenancy agreement dated May 15, 2017. The monthly rent is \$2,000.00 payable on the 20th day of each month. A security deposit of \$1,000.00 was paid on November 10, 2016 and a pet damage deposit of \$1,000.00 was paid on November 10, 2016. A condition inspection report for the move-in was completed by both parties on November 1, 2016.

The landlord seeks an order of possession and an amended monetary order for \$6,000.00 which consists of:

\$2,000.00	Unpaid Rent, January 2018
\$2,000.00	Unpaid Rent, February 2018
\$2,000.00	Unpaid Rent, March 2018

Both parties confirmed that the 10 Day Notice dated January 24, 2018 was served to the tenant's guest on January 24, 2018 in person. The 10 Day Notice states that the tenant failed to pay rent of \$2,000.00 that was due on January 20, 2018 and sets out an effective end of tenancy date of February 4, 2018.

The tenant confirmed that no rent has been paid as claimed by the landlord, only stating that her issues for repairs were not dealt with by the landlord.

Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide any evidence that she was entitled to deduct amounts for repairs that she had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed evidence of both parties and find that the tenant was properly served with the 10 Day Notice dated January 24, 2018. The tenant confirmed that no rent has been paid since the 10 Day Notice was served. As such, I find that the landlord is entitled to an order of possession, to be effective 2 days after the tenant is served.

As for the monetary claim, I find based upon the undisputed affirmed evidence of both parties that no rent has been paid for January 2018, February 2018 and March 2018 as claimed by the landlord's amended application for \$6,000.00 in unpaid rent. As such, the landlord has established an entitlement for a monetary claim of \$6,000.00 in unpaid rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

As for the tenant's request for repairs, I find that such an order is no longer required as the tenancy is at an end. This portion of the tenant's application is dismissed.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$6,100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: April 04, 2018

Residential Tenancy Branch