



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

Introduction

On June 28, 2018, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*,
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent A.P. attended on behalf of the housing society landlord and is herein referred to as "the landlord". The tenant attended the hearing joined by her advocate S.J.

Preliminary Issue – Service of the Landlord's Application for Dispute Resolution

As both parties were present, service of documents was confirmed. The landlord testified that the tenant was served on June 29, 2018 with the Notice of Dispute Resolution Proceeding package for this hearing, which included the landlord's

application for an Order of Possession and Monetary Order for unpaid rent, by posting the package on the tenant's door. The tenant testified that she was out of town from June 22, 2018 until July 22, 2018. Upon her return, the tenant testified that she found the notice documents for this hearing in her mailbox.

Section 89 of the *Act* sets out "special rules" for the service of certain documents. Section 89(1) of the *Act* requires that an application for dispute resolution be served to the other party in person, by registered mail, or as ordered by the Residential Tenancy Branch director.

Section 89(2) of the *Act* allows for an exception to the above-noted rules when a landlord is serving a tenant with an application for dispute resolution for an Order of Possession. In such cases, the landlord may serve the application to the tenant by attaching it to the tenant's door or other conspicuous place at the address where the tenant resides.

As the landlord served their application by attaching it to the tenant's door, I find that the landlord has not served the tenant with the application for dispute resolution in relation to the request for a Monetary Order in accordance with section 89(1) of the *Act*. As such, the landlord's application for a Monetary Order is dismissed with leave to reapply due to an issue with service of documents.

Given that section 89(2) of the *Act* allows for an application for an Order of Possession to be served by attaching to the tenant's door, I must determine if the landlord has established this service and if so, when the application was deemed served on the tenant as the date of service is in dispute.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the third day after it is attached to a door or other conspicuous place.

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

In the event of disagreement between the parties about the date a document was served and the date it was received, an arbitrator may hear evidence from both parties and make a finding of when service was effected.

...

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The landlord submitted into evidence a proof of service witness statement in support of her testimony that the notice of this hearing was posted to the tenant's door on June 29, 2018.

The tenant did not submit any evidence to support her testimony that she was out of town when the landlord served her with the application for this dispute. As well, the tenant did not submit any evidence to support her testimony that the application package was left in her mailbox and not attached to her door.

Therefore, based on the testimony and the evidence before me, on a balance of probabilities, I find that the tenant was deemed served with the landlord's Application for Dispute Resolution Proceeding package on July 2, 2018, the third day after it was attached to the tenant's door, in accordance with sections 89(2) and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord submitted a written tenancy agreement into documentary evidence, and both parties confirmed the following information pertaining the tenancy agreement. This month-to-month tenancy began on February 1, 2017. Monthly rent of \$752.00, due on

the first of the month, includes a “support services” amount of \$301.00. The tenant paid a security deposit of \$341.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord has claimed that as of June 1, 2018, the tenant owed \$777.00 in unpaid rent. The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) on June 7, 2018, by posting the notice on the tenant’s door. The landlord submitted a proof of service witness statement as evidence in support of this claim. A copy of the 10 Day Notice was submitted into evidence by the landlord.

The landlord submitted into documentary evidence a rent ledger listing the rent charges, payments made by the tenant, and account balance. The rent ledger indicated that the tenant was in rental arrears of \$777.00 as of June 1, 2018. The landlord testified that the tenant’s rental arrears have continued to increase and the tenant remains in rental arrears as of the date of this hearing.

The tenant was unsure of the exact date she received the 10 Day Notice dated June 7, 2018. The tenant confirmed that she had not applied for dispute resolution at any time after receiving the notice. The tenant testified that she had made some payments to the landlord since receiving the notice but had not submitted any receipts into evidence. The tenant was unsure of exactly how much rent was in arrears, but she offered to enter into a repayment agreement with the landlord to resolve any outstanding rent owed as she wished to continue in the tenancy.

The landlord stated that they had previously entered into rent repayment agreements with the tenant when she had fallen behind in rent payments and they did not wish to do so again as the landlord stated that it was an ongoing issue.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Both parties confirmed their understanding of the terms of the tenancy agreement which required the tenant to pay \$752.00 in rent and support services on the first of the month.

I accept the evidence before me that the tenant was in rental arrears of \$777.00 as of June 1, 2018.

Section 46 of the *Act* contains provisions by which a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the dated the tenant receives the notice.

In considering this matter, I have reviewed the landlord's 10 Day Notice dated June 7, 2018 to ensure that the landlord has complied with the requirements of section 52 of the *Act*.

I note that the 10 Day Notice used by the landlord is an older version of the form dated 2015, whereas the current version of the form is dated 2016. However, I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

I accept the evidence before me that the 10 Day Notice was served on the tenant by posting on her rental unit door on June 7, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 10, 2018, three days after posting.

I accept the evidence before me that the tenant failed to pay the full rent due or dispute the 10 Day notice within the five-day time limit allowed under section 46(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the stated effective date of the 10 Day Notice, June 20, 2018.

In light of the above, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. Given the tenant's circumstances requiring supportive services, I have directed that the Order of Possession is not effective until after 1:00 p.m. on August 31, 2018 to allow the tenant some notice in seeking other suitable accommodations.

As the landlord's application for a Monetary Order for unpaid rent was required to be dismissed with leave to reapply due to a service issue, I find that a substantial aspect of the landlord's claim could not proceed and therefore the landlord is not entitled to recover the filing fee from the tenant. Accordingly, the landlord's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **after 1:00 p.m. on August 31, 2018**. 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 landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply due to a service of documents issue.

The landlord's application to recover the cost of the filing fee from the tenant 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: August 22, 2018

Residential Tenancy Branch