



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL, CNR, RP, OLC

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- an Order for regular repairs, pursuant to section 32; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on September 19, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on September 24, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

The landlord testified that he did not receive a copy of the tenant's notice of dispute resolution application.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

Based on the above, **in the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on March 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on September 2, 2018 he posted a 10 Day Notice to End Tenancy for unpaid rent, with an effective date of September 15, 2018 (the "10 Day Notice") on the tenant's door. The landlord entered into evidence a witnessed proof of service form stating that the landlord posted the 10 Day Notice on the tenant's door on September 2, 2018.

The landlord testified that the tenant did not pay any rent for September or October 2018.

Analysis

Based on the landlord's testimony and documentary evidence, I find that the 10 Day Notice was posted on the tenant's door on September 2, 2018. I find that the tenant was deemed served with this package on September 5, 2018, three days after its mailing, in accordance with sections 89 and 90 of the *Act*.

I find that the 10 Day Notice meets the form and content requirement of section 52 of the *Act*.

I accept the landlord's undisputed testimony that the tenant has not paid any rent for September and October 2018.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,250.00 on the first day of each month from September to October 2018 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$2,500.00 in unpaid rent.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$625.00 in part satisfaction of his monetary claim for unpaid rent against the tenant.

Section 46(1) of the *Act* states that 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 date the tenant receives the notice. I find that the tenancy ended by way of the 10 Day Notice on the effective date of the 10 Day Notice, that being September 15, 2018. Since the tenant did not move out on that date, I find that the landlord is entitled to a Two-Day Order of Possession, pursuant to section 55 of the *Act*.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

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

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord under the following terms:

| Item | Amount |
|-----------------------|-------------------|
| September rent | \$1,250.00 |
| October rent | \$1,250.00 |
| Less security deposit | -\$625.00 |
| Filing fee | \$100.00 |
| TOTAL | \$1,975.00 |

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.

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 29, 2018

Residential Tenancy Branch