



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPRM-DR, FFL
 Tenant: CNR, OLC, FFT

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- 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 sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to cross examine one another and to make submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) while the landlord acknowledged receiving a copy of the Tenant's Application for Dispute Resolution (Tenant's Application). Pursuant to section 89 of the *Act*, I find that both parties are found to have been duly served with each other's applications.

The tenant acknowledged receipt of the landlord's evidence served with the Landlord's Application. In accordance with section 88 of the Act, I find that the tenant is duly served with the landlord's evidence.

Although the tenant stated that they served their evidence to the landlord with the Tenant's Application, the landlord disputed receiving this evidence.

As the 10 Day Notice was provided in evidence by the tenant and it was received from the landlord as the basis for this hearing, I find that I will consider it as the landlord is not prejudiced by its consideration. As the landlord disputed receiving the remainder of the tenant's evidence and it is the landlord's burden of proof to demonstrate that they have grounds to issue the 10 Day Notice, I find that I will not consider the remainder of the tenant's evidence as it is not directly related to the payment of the rent for August 2018.

The tenant acknowledged receipt of the 10 Day Notice on August 07, 2018, which was posted to the tenant's door. In accordance with section 88 of the Act, I find that the tenant was duly served with the 10 Day Notice on August 07, 2018.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

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

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to authorization to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord provided written evidence that this tenancy began on September 01, 2015, with a current monthly rent of \$997.00 with a security deposit in the amount of \$450.00 that the landlord currently retains.

The landlord also provided three copies of Notice of Rent Increase forms showing the rent being increased from \$900.00 to the current monthly rent amount of \$997.00.

The tenant provided a copy of the signed 10 Day Notice dated August 07, 2018, for \$997.00 in unpaid rent with an effective date of August 17, 2018.

The landlord testified that the tenant paid the monthly rent for August 2018 on August 17, 2018, which is more than the five days allowed by the *Act* upon receiving the 10 Day Notice. The landlord submitted that they issued a receipt, to the tenant, which indicated that the August 2018 rent was accepted for use and occupancy only of the rental unit and that they were still seeking to end the tenancy.

The tenant confirmed that they paid the monthly rent on August 17, 2018, and did not dispute that they received a receipt which indicated that the rent was only accepted for use and occupancy. The tenant stated that they have also paid the monthly rent for September 2018.

The landlord could not confirm or deny whether any rent was paid for September 2018 but stated that they were not seeking a monetary award, only the Order of Possession based on the 10 Day Notice dated August 07, 2018.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on August 07, 2018, I find the tenant had until August 12, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Having reviewed the evidence and affirmed testimony, I find that the tenant submitted the Tenant's Application on August 09, 2018, within the five day time limit permitted under section 46 (4) the Act; however, based on the tenant's testimony, I find that the tenant has confirmed that they did not pay the monthly rent within the five days allowed by the Act or provide any evidence that they had any legal authority under the Act to withhold any rent as it was confirmed in the testimony that the monthly rent was paid on August 17, 2018, which is 10 days after the tenant received the 10 Day Notice. For the above reasons, I dismiss the Tenant's Application to cancel the landlord's 10 day Notice, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the 10 Day Notice complies with section 52 of the Act. For these reasons, I grant a two day Order of Possession to the landlord.

As this tenancy is ending and the tenant was not successful in disputing the 10 Day Notice, the Tenant's Application to have the landlord comply with the Act and to recover the filing fee for their application is dismissed, without leave to reapply.

As the landlord confirmed that the tenant paid the monthly rent for August 2018, the Landlord's Application for a monetary award for August 2018 rent is dismissed, without leave to reapply.

As the landlord was successful in obtaining an Order of Possession for the rental unit, I allow their request to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour in the amount of \$100.00, which allows the landlord to recover the filing fee for this application from the tenant. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 28, 2018

Residential Tenancy Branch