



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, PSF, RP, OPRM-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On September 20, 2018, the Applicant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, and seeking a repair order pursuant to Section 32 of the *Act*.

On September 21, 2018, the Landlord applied for a Direct Request proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On September 25, 2018, this Application was set down to be heard as a cross application with the Tenant’s Application.

M.N. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. The Landlord provided a solemn affirmation.

The Landlord advised that she served the Tenant with the Notice of Hearing package and evidence by registered mail on September 26, 2018. She provided a receipt to confirm that the Tenant signed to accept this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

M.N. advised that she did not know who applicant M.W. was as he was not a tenant with respect to this tenancy. She advised that the tenancy with the Tenant started on May 1, 2007 and rent was currently established at \$1,334.00 per month, due on the first day of each month. A security deposit of \$487.50 was also paid.

M.N. stated that the Tenant had not paid September 2018 rent in full, so the Notice was served to the Tenant by placing it in his mailbox on September 5, 2018. The Notice indicated that \$1,334.00 was outstanding on September 1, 2018 and indicated that the effective end date of the Notice was September 15, 2018. She advised that the Tenant had not paid October or November 2018 rent either.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on September 8, 2018. According to Section 46(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on September 13, 2018, the Tenant must have made his Application by this day at the latest. However, the undisputed evidence is that the Tenant made his Application on September 20, 2018. Moreover, as outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. As the Tenant was late in making this Application and did not pay the rent in full by September 13, 2018, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. Furthermore, as the Tenant did not attend the hearing, I dismiss his Application in its entirety.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession that takes effect **two days after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlord is entitled to compensation for unpaid rent for September, October, and November 2018. As such, I award the Landlord a monetary award in the amount outlined below.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
September rent arrears	\$1,334.00
October rent arrears	\$1,334.00
November rent arrears	\$1,334.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$4,102.00

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This order must be served on the Tenant by the Landlord. 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 provide the Landlord with a Monetary Order in the amount of **\$4,102.00** 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: November 5, 2018

Residential Tenancy Branch