



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL; CNR, OLC

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 9, 2018 ("10 Day Notice"), pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. 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.

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: 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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

During the hearing, I informed the landlord that pursuant to section 55 of the *Act*, if I dismissed the tenant's application to cancel a 10 Day Notice, the landlord was entitled to an order of possession if the notice met the requirements of section 52 of the *Act*.

The landlord could not recall how or when he served the landlord's application for dispute resolution hearing package to the tenant. I notified the landlord that his entire application, except for the order of possession and the \$100.00 application filing fee, was dismissed with leave to reapply, for failure to provide service information. Therefore, the hearing and my decision can only deal with the order of possession claim and the landlord agreed to proceed on this basis.

The landlord confirmed that the tenant was served with the landlord's 10 Day Notice on December 9, 2018, by way of posting to his rental unit door. The effective move-out date on the notice is December 20, 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 December 12, 2018, three days after its posting. In his application, the tenant said that he received the notice on December 9, 2018 by posting to his door and he applied to dispute this notice on December 12, 2018.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective 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 testified regarding the following facts. This tenancy began on August 1, 2015. Monthly rent in the current amount of \$1,075.00 is payable on the first day of each month. A security deposit of \$487.50 and a pet damage deposit of \$300.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession against the tenant. The landlord issued the 10 Day Notice for unpaid rent of \$3,225.00 due on December 1, 2018, which includes rent of \$1,075.00 for each month from October to December 2018. The landlord testified that the tenant failed to pay rent from October 2018 to January 2019 in the amount of \$1,075.00 for each month, totalling \$4,300.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on December 1, 2018, within five days of being deemed to have received the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice but did not appear at this hearing to present his application. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on December 22, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 22, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As the landlord was only partially successful in his application, I find that he is not entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. 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 to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent and to retain the tenant's security and pet damage deposits is dismissed with leave to reapply.

The tenant's entire application 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: January 24, 2019

Residential Tenancy Branch