



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MT FFL OPRM-DR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46; and
- more time to make an application to cancel the landlord's Ten-Day Notice pursuant to section 66.

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

- an order of possession for non-payment of rent pursuant to section 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.

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 tenant testified that he did not serve the landlord with the notice of dispute resolution package. The landlord testified that she did not receive the tenant's notice of dispute resolution package and that she was not aware of the application prior to the hearing.

The landlord testified that she served the tenant with the notice of dispute resolution package by registered mail on December 21, 2018. The landlord provided the tracking number and the Canada Post receipt to confirm delivery. Accordingly, I find that the

tenant was served with the notice of dispute resolution package in accordance with section 89 of the *Act* on December 26, 2018.

The landlord filed an amendment to her application for dispute resolution on January 8, 2019 and she served the tenant with the amendment by registered mail sent the same day. The landlord provided the tracking number and the Canada Post receipt to confirm delivery. I find that the tenant was served with the amendment in accordance with sections 89 of the *Act*.

Preliminary Issues:

Service of Tenant's Application

The landlord objected to the tenant's application because the notice of dispute resolution package was not served. Section 89 of the *Act* states that an applicant must serve the notice of dispute resolution documents in a specified manner. Furthermore, the Residential Tenancy Branch (RTB) Rule of Procedure 3.1 states that an applicant must serve the notice of dispute resolution package on the respondent within three days of the documents being available from the RTB. In this matter, I find that the tenant did not serve the notice of dispute resolution package on the landlord. Accordingly, I dismiss the entirety of tenant's application.

Amendment regarding Strata Fine

At the hearing, the landlord requested an amendment to her application to add a monetary claim for damages relating to a strata fine regarding an allegation that the tenant was smoking in the rental unit. Section 4.2 of the *Rules of Procedure* provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. However, I do not find that the tenant could reasonably have anticipated that the landlord would make this amendment at the hearing.

In addition, RTB Rules of Procedure 2.3 states that, "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply." It is my determination that the landlord's claim regarding the strata fine is not sufficiently related to the landlord's other claims to warrant that they be heard together. I exercise my discretion to deny the landlord's

request to amend her claim to make a claim for a monetary order relating to the strata fee. The landlord is however at liberty to reapply for this relief.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for non-payment of rent pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to reimbursement of his filing fee pursuant to section 72?

Background and Evidence

The parties agreed that they signed a fixed term tenancy agreement which commenced on September 1, 2018. The tenancy agreement had a monthly rent of \$1,400.00 due on the first of each month. The tenant paid a \$700.00 security deposit and no pet damage deposit.

The landlord testified that the tenant did not pay the November 2018 rent and the landlord previously filed an application for dispute resolution relating to the November 2018 rent. The landlord testified that she received a monetary order for the November rent in the previous application for dispute resolution but her request for an order of possession was denied.

The landlord testified that the tenant has not paid any rent for December 2018 or January 2019.

The landlord's witness, HD, testified that he posted the Ten-Day Notice on the tenant's door on December 11, 2019. The Ten-Day Notice stated an amount due of \$1,400.00 as of December 1, 2018 and a move out date of December 21, 2018. The landlord submitted as evidence a copy of the Ten-Day Notice and a copy of a witnessed proof of service of the Ten-Day Notice.

The tenant acknowledged that he has not paid the rent for December 2018 or January 2019 due to recent medical issues.

The tenant also testified that he has been harassed by the landlord and he is not comfortable staying there. However, the tenant states that he has had difficulty finding a new rental unit.

Analysis

Section 55 of the *Act* requires that, when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*. In this matter, the tenant has submitted an application for dispute resolution to cancel the Ten-Day Notice and this application has been dismissed as set forth above. Accordingly, I must grant the landlord an order of possession pursuant to section 55 of the *Act* if I find that the Ten-Day Notice complies with section 52 of the *Act*.

I find the form and content of the Ten-Day Notice does comply with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an order of possession pursuant to section 55 of the *Act*.

Based on the agreed testimony of both parties, I find that the tenant had a contractual obligation to pay the landlord rent in the amount of \$1,400.00 per month. Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. I find that the tenant did not pay the landlord the rent for December 2018 or January 2019. As such, I find that the landlord is entitled to a monetary award \$2,800.00 for unpaid rent in December 2018 and January 2019.

I find that the landlord holds a security deposit of \$700.00 and that this amount can be deducted from the amount owed to the landlord pursuant or section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee.

The net award to the landlord is accordingly \$2,200.00 as set forth below:

| Item | Amount |
|---|-------------------|
| December 2018 and January 2019 Rent Payable to the landlord | \$2,800.00 |
| Filing recovered by the landlord | \$100.00 |
| Less: deposit held by the landlord | (\$700.00) |
| Net Award to the landlord | \$2,200.00 |

Accordingly, I order the tenant to pay the landlord the sum of \$2,200.00.

Conclusion

I dismiss the tenant's request to cancel the Two-Day Notice without leave to reapply.

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. 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 grant the landlord reimbursement of the filing fee.

I grant the landlord a monetary order in the amount of **\$2,200.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: January 31, 2019

Residential Tenancy Branch