



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR ERP FFT FFL OPRM-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

LV appeared as agent for the landlord, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the tenant’s application for dispute resolution hearing package (“Application”) and evidentiary materials. In accordance with sections 89 and

90 of the *Act*, I find the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence.

The tenant confirmed receipt of the 10 Day Notice for Unpaid Rent dated December 8 2018, which was posted on her door on the same date. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on December 11, 2018, 3 days after posting.

Although the landlord applied for a monetary Order of \$1,525.00 in their initial claim, since they applied another \$1,525.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$1,525.00 to \$3,050.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Preliminary Issue - Service of the Tenant's Application for Dispute Resolution

The landlord's agent testified that the landlord did not receive the tenant's application. The tenant testified in the hearing that she could not recall if and how she had served the landlord with her application, and responded "I don't think I served her". .

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

As the tenant was unable to confirm how and when the landlord was served, I am not satisfied that the landlord was served in a manner required by section 89(1) of the *Act*. I, therefore, cannot consider the tenant's application, and I dismiss the tenant's application without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the tenant's application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid. The tenant must bear the cost of this filing fee for her application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover his filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

This fixed-term tenancy began on November 1, 2018. Rent is currently set at \$1,525.00 per month, payable on the first of the month. The monthly rent includes a \$25.00 parking fee. The landlord collected, and still holds, a security deposit in the amount of \$750.00. The tenant continues to reside at the rental unit.

The landlord issued the 10 Day Notice on December 8, 2018, indicating an effective move-out date of December 18, 2018. The landlord testified that the 10 Day Notice was issued as the tenant failed to pay rent for December 2018, and since the Notice was served, the tenant has not paid any rent. The tenant does not dispute that she has failed to pay rent for the months of December 2018 and January 2019.

The landlord is requesting a monetary order for the unpaid rent, the filing fee, and an Order of Possession.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

It was undisputed by the tenant that she has not paid the outstanding rent by December 16, 2018, within five days of being deemed to have received the 10 Day Notice. Although the tenant filed her application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice, the tenant failed to serve her application on the landlord in accordance with section 89 of the *Act*, and as a result her application was dismissed.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to section 55 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant.

I find that it was undisputed that the tenant failed to pay rent for December 2018 and January 2019. Accordingly I am allowing the landlord a Monetary Order to recover unpaid rent in the amount of \$3,050.00. As the landlord was successful in their application, I am allowing the landlord to recover the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act* I order the landlord to retain the tenant's security deposit of \$750.00 towards the monetary order.

Conclusion

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

The landlord's application is allowed. I find that the landlord's 10 day Notice is valid and effective as of December 21, 2018.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. 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 \$2,400.00 monetary Order in favour of the landlord, which allows the landlord to retain the \$750.00 security deposit plus recover the unpaid rent for December 2018 and January 2019, and the filing fee for this application.

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: February 7, 2019

Residential Tenancy Branch