



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPRM-DR**

Introduction

This participatory hearing was convened after the issuance of a January 2, 2019 interim decision by an adjudicator. The adjudicator adjourned the direct request proceeding of the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- An Order of Possession for unpaid rent pursuant to section 46 and 55; and
- A monetary order for unpaid rent pursuant to section 67

to this participatory hearing to determine which of the two 10 Day Notices issued by the landlord was served upon the tenant.

The landlord and the tenant attended the scheduled hearing. The landlord was represented by her agent, ML. The tenant called into the hearing seven (7) minutes late while the landlord was giving testimony regarding service of the Notice of Reconvened Hearing. The tenant confirmed he received the landlord's Notice of Reconvened Hearing and does not dispute service. I find that the tenant was duly served with the Notice of Reconvened hearing pursuant to section 89 of the *Act*.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

Preliminary Matter

During the course of the hearing, the landlord asked for permission to increase the monetary claim to include an additional month of unpaid rent for January and February 2019. I have allowed the landlord's request pursuant to section 64(3)(c) of the *Act* and rule 4.2 of the *Rules of Procedure*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 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 the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 26, 2017, indicating a monthly rent of \$600.00, due on the first day of each month for a tenancy commencing on October 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent ("October Notice") dated December 10, 2018, for \$80.00 in unpaid rent that was due October 1, 2018. The October Notice provides the tenant five days from the date of service to pay the rent in full or apply for dispute resolution or the tenancy ends on the stated effective vacancy date of December 20, 2018;
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent ("December Notice") dated December 10, 2018, for \$600.00 in unpaid rent that was due December 1, 2018. The December Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for dispute resolution or the tenancy ends on the stated effective vacancy date of December 20, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that a 10 Day Notice was placed in the tenant's mailbox or mail slot at 2:30 pm on December 10, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

The landlord testified he served the tenant with both the October Notice and the December Notice by posting to the door of the tenant's rental unit on December 10, 2018. When the tenant testified that the Notices were found slid under his door on December 11, 2018 the landlord later acknowledged he had served the Notices by sliding them under the door of the rental unit.

The landlord acknowledges he received payment of \$680.00 on December 20, 2018 and provided invoice number 12467 to the tenant as a receipt. Noted on the invoice is

the following: *The money you paid is for occupying the room only. Not for [unreadable] the extension of the rental contract.* The landlord testified that he has not received rent for January 2019 because when he tried to collect it, the tenant refused to pay him as the matter is before the Residential Tenancy Branch. He did not try to collect rent for the month of February anticipating the same response.

The tenant testified that on December 11, 2018 he received both the October Notice and the December Notice after they were slipped under the door of his unit. The tenant acknowledges the Notices were 2 paged, double sided documents.

The tenant testified that he wanted to pay the outstanding rent when he received the Notices, but since the landlord did not reside in the building, it was difficult to contact the landlord. The tenant was guided by his understanding that the 10 Day Notice allowed him 10 days to pay the arrears in rent or face eviction. He understood that he had until December 20, 2018 to pay the outstanding arrears. The tenant testified that after paying the \$680.00 on December 20, 2018 he tried to pay the rent for January 2019 but his attempt to pay was refused by the landlord because the matter is under dispute at the Residential Tenancy Branch.

Analysis

Though the landlord testified that he served the October Notice and December Notice by posting to the door of the rental unit on December 10, 2019, the tenant acknowledges he received them on December 11, 2018. I find that the Notices were served on December 11, 2018 pursuant to section 88 and 90 of the *Act*.

When the landlord accepted the \$680.00 for arrears on December 20, he clearly indicated to the tenant that acceptance did not reinstate the tenancy or terminate the application that was currently before the *Residential Tenancy Branch*. During the hearing, the tenant did not seek to use the payment of the arrears as argument that the tenancy should be reinstated. I find the tenancy has not been reinstated.

Although the tenant fully paid the rental arrears as noted in the Notices the tenant was under the mistaken belief that he had 10 days to make his payment or make an application to the Residential Tenancy Branch.

Section 46 of the *Act* states:

- (4) **Within 5 days** after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions **within five days** led to the end of his tenancy on the effective date stated on both the October Notice and the December Notice, December 20, 2018.

Section 46(2) of the *Act* states that a landlord's Notice must comply with section 52 [*form and content of notice to end tenancy*]. Based on undisputed testimony of the landlord, and the documents provided, I find that the Notices comply with the form and content provisions of section 52 of the *Act*, which state that the Notice must be in writing and (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.

Section 53 of the *Act* allows an arbitrator to change the effective date on a Notice to End Tenancy to the first day that complies with the required Notice period. The tenant received the Notices on December 11, 2018 thus I have corrected the effective vacancy date to ten (10) days later, or December 21, 2018, pursuant to section 53. As the tenant did not vacate the rental unit by the corrected effective date of December 21, 2018, I find that the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant.

It was undisputed that the tenant paid his outstanding arrears of rent until the end of December but didn't pay rent for the months of January 2019 and February 2019. The landlord and tenant disagree as to which party refused the payment of rent for the two months. Despite this, the tenant was still living in the rental unit on February 11, 2019, the date of the hearing without paying rent. Since tenant has not paid rent for January and February I award the landlord rent for the months of January and February 2019 in the amount of **\$1,200.00** in accordance with section 67 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone in the rental unit 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 the landlord a monetary order in the amount of **\$1,200.00**. 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 14, 2019

Residential Tenancy Branch