



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, FFT, OPR, MNRL, FFL

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail though she did not recall on what date. The landlord testified that she received the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was served with this package in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution 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 priority claim regarding the 10 Day Notice to End Tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to the tenant's monetary claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply.

Preliminary Issue- Joining Applications

On February 5, 2019 the landlord filed an application for dispute resolution pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 46 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's application was filed too late to be automatically crossed with the tenant's application. The landlord's application is set to be heard on March 19, 2019. The applications pertain to the same residential property and names the same parties.

Section 2.10 of the Residential Tenancy Rules of Procedure states that Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a. whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b. whether all applications name the same landlord;
- c. whether the remedies sought in each application are similar; or
- d. whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

I find that the remedies sought in the landlord's application are similar to the remedies sought in the tenant's application and that I will have to consider the same facts and make the same or similar findings of fact or law in resolving both applications. I therefore join the landlord and the tenant's applications in order to ensure the dispute resolution process will be fair, efficient and consistent.

The landlord testified that she served her application for dispute resolution on the tenant via registered mail on February 7, 2019. The tenant testified that she received the landlord's application for dispute resolution on February 18, 2019. I find that the tenant was served with the landlord's application in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
4. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 46 and 67 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed that they entered into a periodic tenancy agreement in February of 2018 at a rental rate of \$500.00 due on the first day of every month. A security deposit of \$250.00 was paid by the tenant to the landlord. A tenancy agreement was not entered into evidence.

Both parties agreed that on January 11, 2019 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for unpaid rent with an effective date of January 21, 2019 (the "10 Day Notice"). The 10 Day Notice was entered into evidence and stated that the tenant failed to pay rent in the amount of \$600.00. The tenant agreed that at the time the 10 Day Notice was served she owed the landlord \$600.00 in unpaid rent: \$100.00 for the month of December 2018 and \$500.00 for the month of January 2019. The tenant testified that she has not paid the landlord any rent money since she was served with the 10 Day Notice.

Both parties agreed that on January 9, 2019 a skunk sprayed at the subject rental property. The tenant testified that the skunk sprayed in the sub-floor of the subject rental property. The tenant testified that the subject rental property became unlivable due to the smell and she has not resided at the subject rental property since that time but did not remove her belongings from the property. The tenant did not testify that she at any time served the landlord with a written notice to end tenancy.

Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that 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.

I find that while the tenant applied to cancel the 10 Day Notice within five days of receiving it, she did not pay the overdue rent. As the tenant admitted that she owed the landlord \$600.00 in back rent at the time she was served the 10 Day Notice, and did not pay this back rent, I find that the landlord has the right to end the tenancy pursuant to section 46(1) of the *Act*. Pursuant to section 55 of the *Act*, I find that the landlord is entitled to a two-day Order of Possession.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenancy is currently ongoing as the tenant has not removed her belongings from the subject rental property or served the landlord with a written notice to end tenancy.

In addition, section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that had the tenant provided the landlord with notice to end tenancy in response to the skunk spray on January 9, 2019, the earliest date to end the tenancy that complies with section 45 of the *Act* would have been February 28, 2019.

Accordingly, I find that the tenant was obligated to pay the monthly rent in the amount of \$500.00 on the first day of each month from December 2018 to February 2019 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,100.00 in unpaid rent.

As the tenant was not successful in her application I find that she is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72.

As the landlord was successful in her application I find that she is entitled to recover the \$100.00 filing fee from the tenant pursuant to section 72.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 issue a Monetary Order to the landlord in the amount of \$1,200.00.

The landlord is provided with this Order 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: February 26, 2019

Residential Tenancy Branch