



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, ERP, OLC, FFT

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order for emergency repairs, pursuant to section 33;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Preliminary Issue- Service

The landlord's agent testified that the tenant did not serve him with the tenant's application for dispute resolution. The landlord's agent testified that the tenant texted him informing him of the existence of his application for dispute resolution. The landlord's agent testified that he attended at the Residential Tenancy Branch and was given a copy of the tenant's application for dispute resolution. The landlord's agent testified that he is seeking an Order of Possession for unpaid rent.

I find that the landlord's agent was sufficiently served, for the purposes of this *Act*, with the tenant's application for dispute resolution, pursuant to section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord 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 that is compliant with the *Act*.

Preliminary Issue- Dismissal

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

Based on the above, **in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.**

Issue

1. Is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of his 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's agent provided the following undisputed testimony. This tenancy began on October 2, 2018 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is

payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenant to the landlord.

The landlord's agent testified that on April 4, 2019 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of April 16, 2019 (the "10 Day Notice") was posted on the tenant's door. The 10 Day Notice was entered into evidence.

The landlord's agent testified that the tenant has not paid rent for March, April or May 2019.

Analysis

I find that service of the 10 Day Notice was effected on the tenant on April 7, 2019, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 55 of the *Act* states that 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:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application and upheld the landlord's 10 Day Notice, I find that the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

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.

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: May 28, 2019

Residential Tenancy Branch