



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenant: CNR, DRI, PSF, LRE, FF
Landlord: OPR, MNR, MNDC, MND, FF

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 tenant applied May 24, 2019 for:

1. To Cancel a Notice to End for Unpaid Rent - Section 46
2. Dispute an additional rent increase – Section 43
3. Control the landlord's right to enter – Section 70
4. Provide service or facility required by the tenancy agreement or law – Section 65
5. Order landlord to Comply with the Act- Section 62
6. An Order to recover the filing fee for this application - Section 72

The landlord applied May 31, 2019 for:

1. An Order of Possession - Section 55
2. A Monetary Order for unpaid rent and utilities - Section 67
3. A Monetary Order for damage to the unit – Section 67
4. A Monetary order for damage or loss for which tenant is responsible – section 67
5. An Order to recover the filing fee for this application - Section 72

The landlord testified they received the tenant's application and Notice of Hearing.

The applicant **tenant** was provided with a copy of the Notice of a Dispute Resolution Hearing dated May 24, 2019 after filing their application. The tenant, however, did not attend the hearing set for today at 9:30 a.m. The phone line remained open during the hearing of 15 minutes and was monitored throughout this time. The only party to call into the hearing was the landlord. As a result, the tenant's application was preliminarily **dismissed**, without leave to reapply.

The landlord testified that they served their application and Notice of Hearing by e-mail as they were permitted to do via an *ex-parte* Order of the director dated June 05, 2019 for substituted service, which in part states as follows:

For this reason I allow the landlord substituted service of the Application for Dispute Resolution, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

I dismiss the landlord's request to serve an Order or Decision of an Arbitrator and a Notice of a Review of the Order or Decision of an Arbitrator as it is not known at this time whether the tenant's e-mail address will still be active if the time comes for service of any Orders or Notice of Review documents.

The landlord did not provide proof of service as Ordered by the director to confirm they served the tenant in accordance with the director's Order. As a result, I find that the landlord has not provided sufficient evidence to satisfy me that the tenant is aptly aware of the landlord's claim(s) in this matter. Therefore, I must **dismiss** the landlord's application, *with leave to reapply*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession as prescribed by **Section 55** of the Act?

Background and Evidence

The landlord testified to, and provided proof of service that on May 18, 2019 they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by posting it to their door. The landlord testified that to their knowledge it seems the tenant is still residing in the unit.

Analysis

I find the tenant was appropriately served with the 10 Day Notice. I find that **Section 55(1)** of the Act states that if I dismiss the tenant's application or uphold the landlord's

Notice to End that **I must** grant the landlord an Order of Possession. I find the landlord's Notice to End complies with the form and content required by **Section 52** of the Act and is valid. In this matter I find that despite the tenant applying to dispute the Notice they failed to attend their hearing and therefore their application has been dismissed.

As a result of all the above I find that the landlord is therefore entitled to an Order of Possession.

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant.** The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

It must be noted that the substituted service order of June 05, 2019 dismissed the landlord's request to serve an Order or Decision of an Arbitrator and a Notice of a Review of the Order or Decision of an Arbitrator. Therefore, to ensure effective service of the order the landlord should be mindful to employ an alternate method of service.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord's application is dismissed, *with leave to reapply*.

The landlord is given an Order of Possession pursuant to Section 55(1) of the Act.

This Decision is final and binding.

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: July 09, 2019

Residential Tenancy Branch