



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MT
OPRM-DR, FFT

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and for an extension of time in which to dispute the 10 Day Notice. The Landlords applied for an Order of Possession based on the 10 Day Notice, for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and both Landlords were present for the duration of the teleconference hearing. The Tenant stated that she received a package from the Landlords on the door of the rental unit as well as one in the rental unit. The Landlords confirmed that these two packages contained their evidence and stated that they served the Tenant with the Notice of Dispute Resolution Proceeding package by registered mail, which was unclaimed.

The Landlords provided the registered mail tracking number in their evidence which is also included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was mailed on June 21, 2019 and a notice card delivered on June 25, 2019. The package was returned to the Landlord as unclaimed. As registered mail is a method of service as stated in Section 88 and 89 of the *Act*, I find that the Tenant was duly served with the Notice of Dispute Resolution Proceeding package despite not claiming the mail.

The Landlords stated that they did not receive the Notice of Dispute Resolution Proceeding package regarding the Tenant’s application and instead found out she had

applied from the Residential Tenancy Branch who had informed them that the applications were scheduled to be heard together. The Tenant stated that she served the Landlords with the notice of hearing documents by email. However, in the absence of any information that would confirm that the email was sent and received, I am not satisfied that the Landlords were served with a copy of the notice of hearing documents as required by the *Residential Tenancy Branch Rules of Procedure*.

I also note that service by email is not an acceptable method of service in accordance with Sections 88 and 89 of the *Act*. Therefore, as I am not able to confirm that the Landlords were served with the notice of hearing documents regarding the Tenant's application, I dismiss the Tenant's application without leave to reapply. This decision will address the Landlords' application only.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Are the Landlords entitled to an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on March 1, 2019. Rent in the amount of \$1,250.00 is due on the first day of each month. A security deposit of \$625.00 was paid at the start of the tenancy.

The Landlords testified that they served the Tenant with a 10 Day Notice on June 3, 2019 by posting the notice on the Tenant's door. The Tenant confirmed receipt of this notice on or around June 3, 2019. The 10 Day Notice dated June 2, 2019 was

submitted into evidence and states that \$1,250.00 was unpaid as due on June 1, 2019. However, the Landlords clarified that they had received partial payment towards June 2019 rent. They submitted that on June 1, 2019 they received a payment of \$650.00 and on June 29, 2019 they received a payment of \$600.00.

The Landlords also stated that for July 2019 rent they received a payment of \$950.00 on July 25, 2019 and have not received any payments towards August 2019 rent. The Landlords have claimed compensation for outstanding rent in the amount of \$1,550.00 which is \$300.00 owing for July 2019 and \$1,250.00 owing for August 2019.

The Landlords submitted a copy of a receipt dated July 25, 2019 showing a payment of \$950.00 for use and occupancy only, an email confirming receipt of \$600.00 on June 29, 2019 for use and occupancy, and copies of e-transfer payment information confirming date and amount of payments made.

The Tenant testified that part of her rent was being paid by social assistance. She stated that she had thought that the money would be deposited directly to the Landlords and when she called to confirm she was told this had occurred but there had been an error in the bank account information.

The Tenant agreed that she paid \$650.00 for June 2019 and \$950.00 for July 2019. She stated that she was supposed to meet with social assistance to confirm that they would pay the Landlords directly but was unable to as she has been in the hospital for the past 2.5 weeks. She stated that this is why August 2019 rent was not paid as she has to meet with them to confirm the payment details. The Tenant agreed that she owes \$300.00 for July 2019 rent and \$1,250.00 for August 2019 rent.

The Landlords testified that after discussing a possible social assistance payment error with the Tenant they contacted social assistance and were told that there was no record that direct deposit to them had been set up. They stated that the Tenant has only paid the full rent on time once since the start of the tenancy and that they have issued a 10 Day Notice previously.

Analysis

Section 46(1) of the *Act* states the following:

46 (1) 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.

As the parties agreed that the full rent amount of \$1,250.00 was not paid as due on June 1, 2019, I find that the Landlords were within their rights to serve the Tenant with a 10 Day Notice pursuant to Section 46 of the *Act*.

As stated in Section 46(4) of the *Act*, a tenant has 5 days to pay the outstanding rent or apply to dispute the notice. The Tenant received the 10 Day Notice on or around June 3, 2019. She applied to dispute the notice on June 12, 2019 and also applied for an extension of time to dispute the notice. However, as stated the Tenant's application was dismissed and therefore the application to dispute the notice is not being considered. I also accept the testimony of both parties that the Tenant did not pay the outstanding rent within 5 days, and instead paid the \$600.00 owing for June 2019 on June 29, 2019.

Therefore, I find that the 10 Day Notice is valid and was not cancelled by payment of rent in the allowable timeframe. Upon review of the 10 Day Notice I also find that it complies with the form and content requirements of Section 52 of the *Act*. Therefore, I find that the Landlords are entitled to an Order of Possession pursuant to Section 55 of the *Act*. The Landlords are granted a 2-day Order of Possession to be served upon the Tenant.

Regarding the claim for unpaid rent, I accept the testimony of both parties as to the amount that remains unpaid. While the Tenant testified as to issues with social assistance, I find that it is the Tenant's responsibility to ensure rent is paid when due as required by Section 26 of the *Act* and also to resolve any issues with payment of rent right away. I also find that the parties were in agreement as to the amounts that had been paid, which were also established by the rent receipts provided in evidence. As the Tenant did not dispute the amount owed, I order the Tenant to pay the outstanding rent to the Landlords. The Landlords may retain the security deposit towards the amount owed.

As the Landlords were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. I grant the Landlords a Monetary Order in the amount outlined below:

July 2019 rent	\$300.00
August 2019 rent	\$1,250.00

Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$625.00)</i>
Total owing to Landlord	\$1,025.00

Conclusion

The Tenant's application is dismissed without leave to reapply due to a service issue.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$1,025.00** as outlined above. The Landlords are 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: August 02, 2019

Residential Tenancy Branch