



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, FFL, CNR

Introduction

This hearing dealt with cross applications filed by the parties. On August 13, 2019, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On August 20, 2019, this Application was set down for a participatory hearing to be heard on October 11, 2019 at 9:30 AM.

On August 16, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*. On August 21, 2019, this Application was set down for a participatory hearing to be heard as a cross application with the Landlords’ Application.

On September 19, 2019, the Landlords amended their Application seeking an Order of Possession on a second 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking an Order of Possession on a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*, and seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*.

On September 24, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking monetary compensation pursuant to Section 67 of the *Act*, and seeking provision of services or facilities pursuant to Section 62 of the *Act*. On September 24, 2019, this Application was set down for a participatory hearing on December 2, 2019 at 9:30 AM (the relevant file number is on the first page of this Decision).

The Landlords attended the hearing with M.C. attending the hearing as an agent for the Landlords. The Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlords advised that they served the Tenant with the Notice of Hearing and evidence package by hand on August 21, 2019 and the Tenant confirmed that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

M.C. advised that the Tenant was served with the three Amendments by hand on September 20, 2019 and the Tenant confirmed that she received these documents. Based on this undisputed evidence, I am satisfied that the Tenant was served the Amendments.

The Tenant advised that she served the Landlords with the Notice of Hearing package by posting it on their door on August 23, 2019 and she stated that she had video confirmation of this. However, she did not submit any video evidence of this service for consideration. The Landlords advised that they received no such package, but they did receive a new Notice of Hearing package for a Dispute Resolution proceeding on their gate on September 27, 2019. She also advised that she “believes” she served her evidence by hand to the Landlords, but she does not know what date this was served on. The Landlords stated that they did not receive this evidence either.

Based on the Tenant’s uncertain testimony and lack of proof of service of documents, I am not satisfied that the Landlords were served the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act*, or her evidence package. As such, I dismiss the Tenant’s Application in its entirety. As the Tenant had a future hearing scheduled to dispute the One Month Notice to End Tenancy for Cause and the second 10 Day Notice to End Tenancy for Unpaid Rent, those matters will not be addressed in this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2019 and that rent is currently established at \$1,400.00 per month, due on the first day of each month. A security deposit of \$700.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlords advised that the Notice was served to the Tenant by posting it on her door on August 2, 2019 and the Tenant confirmed that she received this; however, she was unsure of the date. They stated that \$1,400.00 was outstanding on August 1, 2019. The Notice also indicated that the effective end date of the tenancy was August 12, 2019.

They advised that the One Month Notice to End Tenancy for Cause was served to the Tenant on August 21, 2019 in person and the Tenant confirmed that she received this on this date. This notice indicated that the effective end date of the tenancy was September 21, 2019.

They advised that a second 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant on September 5, 2019 by mail and the Tenant confirmed that she received this "sometime." They stated that \$1,400.00 was outstanding on September 1, 2019. This notice also indicated that the effective end date of the tenancy was September 15, 2019.

They stated that they were seeking compensation in the amount of **\$4,200.00**, which is comprised of August, September, and October 2019 unpaid rent; however, all parties agreed that the Tenant paid \$3,000.00 towards the unpaid rent on October 4, 2019.

After receipt of this payment, a letter was sent by the office of M.C. advising that this payment was for use and occupancy only.

The Tenant advised that her rent was not paid in August or September because her ex had not paid her child support and that she has a court date set to have this matter settled. She submitted court documents as documentary evidence to support this position. She confirmed that she did not have written authorization from the Landlords not to pay the rent nor did she have a valid reason under the *Act* which permitted her to withhold the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlords' Notice to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was served the Notice by being posted to her door on August 2, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being deemed to receive the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that "*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 is conclusively presumed to*

have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”

As the fifth day fell on Saturday August 10, 2019, the Tenant must have paid the rent in full on this date at the latest or made her Application to dispute the Notice by August 12, 2019 at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Moreover, while the Tenant claimed that the reason she disputed the Notice late, on August 16, 2019, was due to a clerical error, I do not find that there is any evidence to support this. Regardless, as above, I have dismissed her Application to dispute the Notice as I am not satisfied that the Notice of Hearing package was sufficiently served to the Landlords. Furthermore, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlords are entitled to a monetary award and I grant the Landlords a Monetary Order in the amount of **\$1,200.00** for the balance of rent arrears for October 2019 rent.

With respect to the Tenant's Application to dispute the One Month Notice to End Tenancy for Cause and the second 10 Day Notice to End Tenancy for Unpaid Rent at the scheduled future hearing, as an Order of Possession has already been granted in this hearing, the matters with respect to these notices are a moot point now. However, the Tenant's request for monetary compensation will still proceed at that scheduled future hearing and the parties should still be prepared to proceed with that upcoming hearing.

As the Landlords were successful in their claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlords

Item	Amount
Balance of October 2019 rent arrears	\$1,2000.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,300.00

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlords are provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are provided with a Monetary Order in the amount of **\$1,300.00** 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: October 17, 2019

Residential Tenancy Branch