



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL/ CNR, OLC, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application 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 section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Pre-liminary Issue- Amend Landlord's Name

The landlord's application for dispute resolution lists the owner of the subject rental property (the "owner") and the owner's property management company as landlords. The tenant's application for dispute resolution only lists the owner's property management company as the landlord. The tenant consented to her application being

amended to include the name of the owner. Pursuant to section 64 of the *Act*, I amend the tenant's application to include the owner of the subject rental property as a landlord.

Pre-liminary Issue- Landlord's Claim for Unpaid Rent

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") state that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The landlord's agent testified that the amount of rent outstanding has increased since the 10 Day Notice to End Tenancy for Unpaid Rent was served on the tenant. The landlord's agent testified that the tenant now owes \$4,476.00 in total for the months of August, September and October 2019.

Pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$4,476.00.

Preliminary Issue- Service

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on August 30, 2019. The tenant confirmed receipt of the landlord's application on or around that date but could not specifically recall the date she received it. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

The tenant testified that she served the landlord with her application for dispute resolution via registered mail but could not recall on what date she put it in the mail. The landlord's agent testified that the landlord did not receive the tenant's application for dispute resolution. The tenant did not enter the registered mail receipt or any other proof of service into evidence. The tenant testified that she did not have the tracking number and could not provide it to me verbally in the hearing.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find that the tenant has failed to prove, on a balance of probabilities, that the landlord was served with her application for dispute resolution, pursuant to section 89 of the *Act*. I therefore dismiss the tenant's application for dispute resolution with leave to reapply. Leave to reapply is not an extension of any relevant limitation period.

Issues

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

Background/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 to the following facts. This tenancy began prior to the owner's purchase of the subject rental property in 2018 and is currently ongoing. Monthly rent in the amount of \$1,492.00 is payable on the first day of each month.

The landlord's agent testified that on August 9, 2019 a 10 Day Notice to End Tenancy for Unpaid rent with an effective date of August 20, 2019 (the "10 Day Notice") was posted on the tenant's door. The 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$1,492.00 that was due on August 1, 2019. The tenant confirmed receipt of the 10 Day Notice on August 9, 2019.

The tenant testified that she has not paid any rent for August, September or October of 2019 because the landlord has failed to reimburse her for emergency repairs of the subject rental property.

The tenant testified that she hired two difference companies to complete emergency heating repairs that totaled approximately \$2,300.00. The tenant testified that she provided the owner copies of the invoices and requested he reimburse her. The tenant did not enter into evidence any receipts or invoices for emergency repairs completed. The only invoices the tenant entered into evidence are at page 27 of the tenant's evidence and are illegible. The tenant testified that the illegible invoices are invoices the tenant in the suite above her claims to have paid for emergency repairs.

The landlord's agent testified that the owner of the subject rental property did not receive any invoices for emergency repairs paid for by the tenant.

I asked the tenant when she provided the landlord with receipts or invoices for the work done and she testified that she did not know and could not direct me to any portion of her evidence which supported her testimony.

Analysis

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 found that the 10 Day Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Section 33(5) of the *Act* states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) of the *Act* states that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the tenant has failed to prove, on a balance of probabilities, that she completed emergency repairs as no receipts or invoices for same were entered into evidence. I find that the tenant has failed to prove, on a balance of probabilities, that she provided the landlord with a written account of the emergency repairs she completed accompanied by a receipt for each amount claimed. Pursuant to the above, I find that the tenant has failed to prove that she had a right to withhold rent from the landlord under section 33(7) of the *Act*.

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*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,492.00 on the first day of each month. Based on the testimony of both parties I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$4,476.00 in unpaid rent from August to October 2019.

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. As I have found that the tenant did not pay rent from August to October 2019, contrary to the *Act*, I find that the landlord is entitled to an Order of Possession pursuant to section 46 of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application is dismissed with leave to reapply.

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 landlords in the amount of \$4,576.00.

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: October 18, 2019

Residential Tenancy Branch