



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, MT, OLC
OPRM-DR, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on September 3, 2019, they sought an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 23, 2019 (the "Notice"), an Order for more time to make such an application, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, or the residential tenancy agreement and recovery of the filing fee.

In the Landlord's Application for Dispute Resolution, filed on September 9, 2019, the Landlord sought an Order of Possession and monetary compensation based on the Notice as well as recovery of the filing fee.

The hearing of the parties' Applications was scheduled for teleconference before me at 11:00 a.m. on October 25, 2019. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:12 a.m. Additionally, 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 and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package.

The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on September 13, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 18, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

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.

As the Tenant did not attend the hearing, and the Respondent Landlord appeared and was ready to proceed, **I dismiss the Tenant's claim without leave to reapply.** This includes dismissing the Tenant's request that I cancel the Notice. As such, the tenancy shall end in accordance with the Notice.

Section 55 of the *Residential Tenancy Act* provides in part as follows:

Order of possession for the landlord

55 (1) 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

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice and confirm it complies with section 52 of the *Act*. Consequently, and as I have dismissed the Tenant's claim, **the Landlord is entitled to an Order of Possession effective two days after service.**

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Should the Landlord recover the filing fee?

Background and Evidence

In support of his claim the Landlord testified as follows. He stated that the tenancy began September 1, 2012. Monthly rent is \$1,200.00 per month. The Tenant also paid a security deposit in the amount of \$550.00.

The Tenant failed to pay rent for the month of July 2019 and August 2019 following which the Landlord issued the Notice indicating the sum of \$2,400.00 was outstanding.

The Landlord testified that the Notice was served on the Tenant by posting to the rental unit door on September 23, 2019. A copy of the Proof of Service was provided in evidence.

The Landlord further testified that the Tenant has not paid rent for September and October 2019 such that the sum of \$4,800.00 was outstanding for rent.

Analysis

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find as follows.

I find the Tenant was obligated to pay monthly rent of \$1,200.00. I accept the Landlord's testimony that the Tenant failed to pay rent for July, August, September and October 2019.

I also accept the Landlord's testimony that the Notice was served on the Tenant by posting to the rental unit door on September 23, 2019. Pursuant to section 90 of the *Act* documents served in this manner are deemed served three days later such that I find the Tenant was served as of September 26, 2019. The Notice informed the Tenant that it would be cancelled in the event the Tenant paid the outstanding rent, or made an application for dispute resolution, within five days of service. I find the Tenant failed to pay the rent and failed to make such an application. Consequently, and pursuant to section 46(5) the Tenant is conclusively presumed to accept the end of the tenancy.

Section 26 of the *Act* provides that a Tenant must pay rent when rent is due. I accept the Landlord's evidence that the Tenant failed to pay rent for the aforementioned months. I also accept the Agent's testimony that the sum of \$4,800.00 remains outstanding for unpaid rent. I find the Landlord is entitled to recover this sum from the Tenant pursuant to sections 26 and 67 of the *Act*.

As the Landlord has been successful in their Application, I find they are also entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

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

The Landlord is granted an Order of Possession.

The Landlord is also granted a Monetary Order in the amount of **\$4,900.00** for unpaid rent and recovery of the filing fee. The Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 25, 2019

Residential Tenancy Branch