



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPRM-DR FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent or Utilities, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent and utilities pursuant to section 67 of the *Act*; and
- recovery of the cost of the filing fee for this application from the tenant.

The landlord attended the hearing at the date and time set for this matter and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:09 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm service of documents to the tenant. The landlord testified that he personally served the Notice of Dispute Resolution Proceeding package and his evidence to the tenant at the rental unit on November 16, 2019 at approximately 7:30 p.m.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them.

In this matter, the landlord, as the applicant, has the burden of proving service, as explained in Part 15 of Policy Guideline 12, as follows, in part:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package.

...

Where proof of service is required, the person who actually served the documents must either:

- *be available as a witness in the hearing to prove service, or*
- *provide a signed statement with the details of how the documents were served.*

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply...

In this case, I find that the landlord was able to establish that the tenant was served with notification of this proceeding as the landlord was able to provide the date, time, and location of service of the Notice of Dispute Resolution Proceeding package and evidence. Therefore, I find that the notice of hearing documents and evidence for this matter were served in accordance with sections 88 and 89 the *Act*.

Preliminary Issue – Amendment of Landlord’s Application for Dispute Resolution

The landlord explained that the tenant owed rent in addition to the amount for October 2019 as claimed on the landlord’s Application. However, the landlord had not submitted a rent ledger into evidence for this hearing to provide an accounting of monies owed and paid by the tenant to date. As such, the landlord withdrew his claim for monetary compensation for unpaid rent so that he can reapply with a full accounting of the monies owed. Pursuant to section 64(3)(c) of the *Act*, I permitted the landlord to amend his Application to withdraw his monetary claim for unpaid rent. As such, I dismiss the landlord’s monetary claim for unpaid rent with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession on the basis of the 10 Day Notice to End Tenancy for Unpaid or Utilities Rent?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence by the landlord. The landlord confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began May 1, 2018.
- Current monthly rent of \$1,200.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$600.00, which continues to be held by the landlord.
- The parties signed a separate agreement to their tenancy agreement setting out that the tenant is responsible for paying \$100.00 per month for the cost of utilities.

The landlord testified that the tenant failed to pay any of the \$1,200.00 rent or pay the \$100.00 utilities charge when it was due on October 1, 2019. The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) on October 2, 2019, by posting the notice on the tenant's door. In support of his testimony, the landlord submitted into documentary evidence a proof of service form, signed by the tenant confirming that he received the 10 Day Notice on October 7, 2019.

The landlord submitted a copy of the 10 Day Notice into documentary evidence. The notice was dated October 2, 2019 and stated an effective date for vacancy of the rental unit of October 15, 2019. I explained to the landlord that since the tenant received the notice on October 7, 2019, the effective date for vacancy is required to be 10 days from the date the tenant receives the notice. In accordance with section 53 of the *Act*, an incorrect effective date on a notice to end tenancy automatically corrects to the earliest date that complies with the *Act*, which in this case is October 17, 2019.

The landlord testified that the tenant did not pay any rent within five days of receiving the 10 Day Notice.

There was no evidence before me that the tenant applied to dispute the landlord's 10 Day Notice within five days of receipt.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end due to unpaid rent.

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Therefore, based on the unchallenged testimony of the landlord regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent in the amount of \$1,200.00, as established in the agreed upon tenancy agreement, and that the tenant failed to pay rent for October 2019.

Section 46 of the *Act* provides, in part, the following:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I note that the 10 Day Notice submitted into evidence clearly outlines at the top of the first page that the tenant may face eviction if the tenant does not pay the rent to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch. I also note that second page states that if the tenant does not do either, they are conclusively presumed to have accepted the end of the tenancy and they must move out.

In this matter, the landlord served the tenant with the 10 Day Notice by posting it on the tenant's door on October 2, 2019. The landlord submitted a proof of service signed by the tenant confirming the tenant received the 10 Day Notice on October 7, 2019.

I accept the testimony provided by the landlord that the tenant did not pay the amount of rent identified as owing on the 10 Day Notice nor did the tenant apply to dispute the 10 Day Notice within five days of receiving the notice, as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by October 17, 2019. As that has not occurred, and the effective vacancy date has passed, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenant.

As the landlord was successful in obtaining an Order of Possession through his Application for Dispute Resolution, the landlord is entitled to recover the cost of the filing fee paid for the Application. Therefore, the landlord may retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the filing fee for the landlord's Application.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant or anyone 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 landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible.

The landlord may retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the filing fee for the landlord's Application for Dispute Resolution.

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: January 07, 2020

Residential Tenancy Branch