



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sharon Investments Inc.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes Tenant: CNR, RP
Landlord: FFL, OPRM-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on January 9, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent;
- an order for regular repairs;

The Landlord’s Application for Dispute Resolution was made on February 6, 2020, (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 AM on March 13, 2020 as a teleconference hearing. Only the Landlord’s Agent appeared at the hearing. No one called in for the Tenant. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent and I were the only persons who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

“The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.”

Accordingly, in the absence of any evidence or submissions from the Tenant, I dismiss their Application in its entirety without leave to reapply. The hearing continued based on the Landlord's Application.

The Landlord's Agent testified that he served the Landlord's Application package and documentary evidence to the Tenant by posting it to the Tenant's door on February 10, 2020.

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]...*

As the Landlord's Agent did not serve the Tenant in a manner required by section 89(1) of the *Act*, I dismiss the Landlord's Application with leave to reapply. This does not extend any statutory timelines outlined in the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

While the Landlord's Application was dismissed, the hearing continued to determine if the Landlord is entitled to an order of possession in accordance with Section 55 of the *Act*.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on September 1, 2019. The Tenant is required to pay rent in the amount of \$1,250.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$625.00 which the Landlord continues to hold.

The Landlord's Agent testified the Tenant did not pay rent when due for January 2020. The Landlord's Agent stated that he subsequently served the Tenant with a 10 Day Notice dated January 2, 2020 with an effective date of January 15, 2020, by posting it to the Tenant's door on January 2, 2020. The Landlord's Agent testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$1,250.00 to the Landlord which was due on January 1, 2020.

The Landlord's Agent stated that the Tenant paid \$300.00 to the Landlord on January 4, 2020 but has not paid any amount of outstanding rent to the Landlord since receiving the 10 Day Notice. The Landlord's Agent stated that the Tenant has not paid rent for February and March 2020 as well.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *Act*, the regulations,

or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord's Agent stated that the 10 Day Notice dated January 2 ,2020 with an effective vacancy date of January 15, 2020 was served to the Tenant by posting it to the Tenant's door on January 2, 2020. After receiving the 10 Day Notice, the Tenant made an Application to cancel the 10 Day Notice on January 9, 2020. As no one attended the hearing for the Tenant, their Application to cancel the 10 Day Notice is dismissed without leave to reapply. Furthermore, I find that the Tenant has not paid the outstanding rent owed to the Landlord.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order should be served to the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant did not appear at the time of the hearing; therefore, their Application seeking the cancellation of the 10 Day Notice is dismissed without leave to reapply.

The Landlord did not serve the Tenant with the Landlord's Application in accordance with Section 89 of the Act. As such, the Landlord's Application is dismissed with leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: March 18, 2020

Residential Tenancy Branch