



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL, CNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent;
- a monetary award pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a cancellation of the landlord's notice to end tenancy pursuant to section 46 of the *Act*.

Only the landlord's agent C.B. (the "landlord") attended the hearing. C.B. was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

C.B. explained the tenant was served in person with a 10 Day Notice to End Tenancy for unpaid rent ("10 Day Notice") on January 7, 2020. The landlord said that he also posted the 10 Day Notice on the tenant's door. I find pursuant to section 88 & 90 of the *Act* that the tenant is deemed served with the 10 Day Notice on January 10, 2020, three days after its posting.

Preliminary Issue #1 – LL's Service of Hearing Notice and Evidence

The landlord said he did not recall the exact date that he served the tenant with his Application for Dispute Resolution and evidentiary package but suspected it was most likely on January 18, 2020. The landlord explained he wore a "Go Pro" camera when

servicing the document and handed it to someone on the property who was under the age of 18. The landlord said, "I considered this posted on the door of the rental unit", however, the landlord confirmed that he did not actually post the Application for Dispute or evidence on the tenant's door.

Policy Guideline #12 notes, "The methods permitted for service of documents generally are...by leaving a copy of the document at the person's residence with an adult person who apparently resides with the person to be served...an adult is a person who has reached the age of nineteen."

Based on the landlord's testimony, I find the landlord has failed to serve the tenant with the application for dispute resolution or evidentiary package in accordance with section 89 of the *Act*. For these reasons, I dismiss the landlord's application for dispute with leave to reapply.

Preliminary Issue #2 – T's Application

As I have dismissed the landlord's application for dispute resolution with leave to reapply, I must now turn my attention to the tenant's application for a cancellation of the landlord's 10 Day Notice dated January 7, 2020.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing 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.

Pursuant to Rule 7.3 as noted above, the hearing was conducted in the tenant's absence.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(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.

After reviewing the 10 Day Notice supplied in evidence by the tenant, I find it complies with section 52 of the *Act*.

The tenant's failure to attend this hearing and present the evidence submitted as part of their evidentiary package relating to their application leads me to order that their application to cancel the 10 Day Notice is dismissed without liberty to reapply. I am dismissing without leave to reapply because I find the tenant was aware of the hearing as they submitted several pieces evidence in support of their application.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's 10 Day Notice complies with section 52 of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, in this case, January 10, 2020, three days after it was posted on the rental unit's door. I find the landlord is therefore entitled to a 2 Day Order of Possession.

As the landlord was unsuccessful in his application, he must bear the cost of the filing fee.

Conclusion

The tenant was unsuccessful in applying for a cancellation of the 10 Day Notice and the landlord is therefore provided with a formal copy of an Order of Possession effective 2 Days after service on the tenant. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a monetary award is dismissed with leave to reapply.

The landlord must bear the cost of his own filing fee.

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 12, 2020

Residential Tenancy Branch