



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR-DR, OPRM-DR, FFL
Tenants: CNR, FFT

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 March 4, 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; and
- an order granting the recovery of the filing fee

The Landlord’s Application for Dispute Resolution was made on March 20, 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 Tenant, the Landlord, and the Landlord’s Interpreter, L.C. attended the hearing at the appointed date and time. The Tenant stated that he served the Landlord with his Application package and documentary evidence by registered mail on March 5, 2020. The Tenant submitted a copy of the registered mail receipt in support. The Landlord stated that he did not receive the Tenant’s Application or documentary evidence. The Tenant stated that the tracking information indicated that the Landlord has not yet retrieved the registered mailing from the post office. The Tenant stated that he also

posted a copy of the Application and documentary evidence to the Landlord's door. The Tenant stated that he found the documents torn into pieces and left on the ground in front of the Landlord's door.

I find that Tenant provided sufficient evidence to demonstrate that he took reasonable steps to serve the Landlord a copy of his Application and documentary evidence in accordance with the *Act*. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the above documents were sufficiently served to the Landlord for the purposes of the *Act*.

The Landlord testified that he did not serve his Application or documentary evidence to the Tenant as it "doesn't matter". The Tenant stated that he was surprised to hear that the Landlord had submitted his own Application as he did not receive any documents from the Landlord prior to the hearing.

Preliminary Matters

The Landlord testified that he did not serve his Application package and documentary evidence to the Tenant.

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 has not served 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*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated March 3, 2020, pursuant to Section 46 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2019. Currently, rent in the amount of \$800.00 is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which the Landlord currently holds. The tenancy is ongoing.

The Landlord testified that the Tenant did not pay rent in January, February, and March 2020. The Landlord testified that he subsequently served the Tenant in person on March 3, 2020 with a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$2,400.00, dated March 3, 2020 (the "10 Day Notice") with an effective vacancy date of March 13, 2020.

The Landlord stated that since he served the 10 Day Notice, the Tenant has made no payments towards the outstanding balance of rent as indicated on the 10 Day Notice. Furthermore, the Landlord stated that the Tenant has also failed to pay rent when due

for April 2020. The Landlord stated that the Tenant has failed to pay rent for January, February, March, and April 2020 in the amount of \$3,200.00.

The Tenant confirmed having received the 10 Day Notice served to him in person on March 3, 2020. The Tenant confirmed that he has not paid rent to the Landlord in January, February, March and April 2020. The Tenant stated that he felt entitled to retaining the rent as the Landlord demands that the rent be paid in cash each month. Furthermore, the Tenant stated that the Landlord refuses to sign the rent receipts provided to the Tenant. As such, the Tenant stated that he should not be required to pay the rent to the Landlord. If successful, the Tenant is seeking the return of the filing fee.

Analysis

Based on the affirmed oral testimony and documentary evidence, 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.

I find that the Landlord served the 10 Day Notice dated March 3, 2020, with an effective vacancy date of March 13, 2020, to the Tenant in person on March 3, 2020. The Tenant confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

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. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me to indicate that the Tenant was entitled to withhold the rent, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, March 13, 2020, pursuant to section 46(5) of the *Act*.

I find that if the Tenant felt as though the Landlord was not complying with the Act, the Tenant had other remedies available to them, such as submitting an Application for an order that the Landlord comply with the Act, rather than withholding the rent.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, 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 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.

As the Tenant was not successful with their Application, I find that they are not entitled to the return of the filing fee. As the Landlord's Application was dismissed with leave to reapply, the Landlord is at liberty to reapply for monetary compensation relating to the unpaid rent.

Conclusion

The Landlord did not serve the Tenant with his Application and documentary evidence. As such, the Landlord's Application is dismissed with leave to reapply.

The Tenant breached the tenancy agreement by not paying rent when due. As such, their Application to cancel the 10 Day Notice is dismissed without leave to reapply.

In accordance with Section 55 of the Act, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and 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: April 30, 2020

Residential Tenancy Branch