



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, MNRL-S, OPR, CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing with his interpreter and wife, and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. 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, landlord's interpreter, landlord's wife, and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 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 this hearing, their application is dismissed without leave to reapply.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice, with a corrected, effective date of January 27, 2020, on January 14, 2020 by leaving a copy in the tenant's mailbox. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on January 17, 2020, 3 days after service.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord testified during the hearing that the landlord's Application for Dispute Resolution was served to the tenant on February 5, 2020 by placing the package in the tenant's mailbox.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents].*

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

In this case the service of the application does not meet the requirements of section 89 (1) of the *Act* as set out above. Accordingly, I can only deal with the landlord's application for an Order of Possession, and I dismiss the remainder of the landlord's application with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Background and Evidence

The landlord provided the following submissions. This fixed-term tenancy began on October 1, 2019, with monthly rent set at \$1,500.00. The tenant paid a security deposit in the amount of \$750.00.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on January 14, 2020 as the tenant failed to pay rent for January 2020. The landlord testified that the tenant has failed to pay rent for January through to March 2020, nor has the tenant paid their share of the utilities.

The landlord believes the tenant has moved out, but has left some items behind in the rental unit which appear to be garbage. The landlord testified that the tenant has also failed to return the keys to them. The landlord requests an Order of Possession.

Analysis

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 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 find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, January 27, 2020. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service 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 remainder of the landlord's application is dismissed with leave to reapply.

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 26, 2020

Residential Tenancy Branch