



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP; CNR, LRE, RR, LAT, FFT

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2020 ("10 Day Notice") and dated October 9, 2020, pursuant to section 46;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order allowing the tenant to reduce rent of \$22,559.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

"Witness ES" appeared at this hearing on behalf of the landlord but was excluded from the outset of the hearing and did not return to testify, as per the choice of the landlord.

I confirmed that the correct call-in numbers and participant codes had been provided in the tenant's Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's witness and I were the only people who called into this teleconference.

The landlord stated that she does not think that the landlord served the tenant with the landlord's application for dispute resolution hearing package. As the landlord did not serve the tenant with the landlord's application as required by section 89 of the *Act*, I find that the tenant did not have notice of the landlord's application. I informed the landlord that the landlord's application to recover a monetary order for unpaid rent was dismissed with leave to reapply. The order of possession issue is dealt with below. The landlord stated that the tenant was served with the landlord's 10 Day Notice on September 3, 2020, by way of posting to his rental unit door. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on September 6, 2020, three days after its posting. In his application, the tenant indicated that he received the 10 Day Notice on September 3, 2020, by way of posting to his rental unit door.

Preliminary Issue – Dismissal of Tenant's Application

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Rule 7.3 of the RTB *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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord stated the following facts. This tenancy began on December 15, 2012. Monthly rent in the amount of \$973.00 plus a \$15.00 parking charge, for a total of \$988.00 per month, is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent based on the 10 Day Notice. The tenant sought to cancel the 10 Day Notice, in his application. The 10 Day Notice was issued for unpaid rent of \$988.00, due on September 1, 2020. The landlord confirmed that the tenant failed to pay rent and parking of \$988.00 for September 2020, as well as \$988.00 for rent and parking for October 2020, and these amounts are still outstanding.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on September 1, 2020, within five days of being deemed to have received the 10 Day Notice. The tenant filed an application to dispute the notice on September 9, 2020, within five days of being deemed to receive the 10 Day Notice on September 6, 2020, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing in order to provide his evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on September 16, 2020, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 16, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Conclusion

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 landlord's application for a monetary order for unpaid rent, is dismissed with leave to reapply.

The tenant's entire application is dismissed without 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: October 30, 2020

Residential Tenancy Branch