



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNRL, FFL
Tenant: CNR

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and his agent (the "agent") attended the hearing and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord, the agent and I were the only ones who had called into this teleconference.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Preliminary Issue- Amendments

The tenant's application lists a real estate company as the landlord. The agent testified that the properly named landlord is P.Y., the owner of the subject rental property. In accordance with the undisputed above testimony and section 64 of the *Act*, I amend the

tenant's application to state the correct landlord. The landlord's application for dispute resolution mis-spelled the landlord's last name. Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to correctly spell the landlord's last name.

The agent testified to the correct address of the subject rental property. The address provided in the tenant's application is in a format not used by addresses. Pursuant to section 64 of the *Act*, I amend the address of the subject rental property on the tenant's application to match the address of the subject rental property on the landlord's application.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on October 26, 2020. No receipts were entered into evidence. The agent verbally provided me with the Canada Post tracking number which is located on the cover page of this decision. The Canada Post website was not able to provide any details on the tracking number provided by the agent and a message reading "duplicate PIN" resulted from its search. The agent testified that the package was returned to sender a few days ago and that it was in a new envelope. The agent testified that the package appeared to have travelled to Ontario and back.

Section 89(1) of the *Act* states that 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*].

I find that I am not satisfied that the tenant was served in a manner outlined by section 89 of the *Act*. I therefore dismiss the landlord's application with leave to reapply.

The agent testified that the landlord was served with the tenant's application for dispute resolution in person but could not recall on what date. I find that the landlord was served in accordance with section 89 of the *Act*. The tenant did not attend the hearing.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

Based on the above, in the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Pursuant to section 55 of the *Act*, I will determine if the landlord is entitled to an Order of Possession.

Issue to be Decided

1. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both the landlord and the agent, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on January 1, 2017 and is currently ongoing. Monthly rent in the amount of \$1,569.00 is payable on

the first day of each month. A security deposit of \$745.00 was paid by the tenant to the landlord.

The agent testified that the tenant has not paid October 2020, November 2020, December 2020 or January 2021's rent.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") was posted on the tenant's door on October 7, 2020. The 10 Day Notice was entered into evidence by the landlord. The 10 Day Notice states that the tenant failed to pay rent in the amount of \$1,569.00 that was due on October 1, 2020. The proof of service document entered into evidence was not signed. The tenant filed to dispute the 10 Day Notice on October 14, 2020.

Analysis

Section 46(1) of the *Act* states that 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) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

While the proof of service document pertaining to the 10 Day Notice lacked a signature, I find that the tenant received the 10 Day Notice by October 14, 2020, because he filed to dispute it on that day. I therefore find that the tenant was sufficiently served with the 10 Day Notice, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

I accept the 10 Day Notice into evidence as I find that the tenant has a copy of it, because he filed to dispute it. I find that the 10 Day Notice meets the form and content requirements of section 52 of the *Act*.

I accept the agent's testimony that the tenant did not pay the overdue rent for October 2020, within five days of the tenant's receipt of the 10 Day Notice. I therefore uphold the 10 Day Notice.

Section 55 of the *Act* states that 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 since the 10 Day Notice complies with section 52 of the *Act*, the tenant's application for dispute resolution was dismissed and the 10 Day Notice was upheld, the landlord is entitled to a two-day Order of Possession.

Conclusion

The landlord's application for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*; and
- a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*

are dismissed with leave to reapply.

The landlord's application to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*, is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed 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: January 07, 2021

Residential Tenancy Branch