



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR-DR, FFL

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 landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlords attended the hearing by way of conference call, the tenant did not. I waited until 11:10 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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. The tenant filed his own application and initiated this process but chose not to dial in, accordingly; I dismiss the tenant’s application in its entirety without leave to reapply.

The landlords gave sworn testimony that on November 18, 2020 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenant. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with copies of the landlords' application and evidence.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice, on November 2, 2020 by way of personal service with a witness present. I find that the tenant was duly served with the 10 Day Notice on that day.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave undisputed testimony regarding the following facts. This tenancy began on June 1, 2019, with monthly rent set at \$2,100.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$1,200.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on November 2, 2020 to the tenant, indicating an effective move-out date of November 12, 2020. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service. The landlord testified that the amount of unpaid rent as of this hearing is \$7300.00 dating back to September 2020. Although the landlord made attempts to work with the tenant and allow small partial payments, the tenant has not been able to catch up.

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.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. 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, November 12, 2020. I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords continue to hold the tenant's security deposit in the amount of \$1,200.00. The landlord is entitled to retain \$100.00 from the security deposit to recover the \$100.00 filing fee from the tenant.

Conclusion

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply. I grant an Order of Possession to the landlord.

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 26, 2021

Residential Tenancy Branch