



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, FFL
Tenant: CNR, AS, OLC

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with the landlord seeking an order of possession and the tenant seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord's agent only.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 27, 2021 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the landlord, I find that the Tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, I note that the hearing was originally scheduled as a result of the tenant's Application for Dispute Resolution. The landlord testified that when she applied on her Application, she was told by the Residential Tenancy Branch that the tenant had not submitted an Application to cancel the notice to end tenancy but when she got the hearing documents for her own Application it indicated that her file was "crossed" with the tenants.

However, the landlord also testified that the tenant did not serve the landlord with her Application for Dispute Resolution or her evidence. As the landlord has provided undisputed testimony that the tenant did not serve the landlord with her Application for Dispute Resolution and the fact that the tenant did not attend this hearing to present her Application, I dismiss the tenant's Application for Dispute Resolution, in its entirety, without leave to reapply.

I note that the tenant's Application for Dispute Resolution had named the landlord's agent as the landlord. I note the landlord's Application had named the actual landlord named in the Tenancy Agreement and the Notice to End Tenancy as the landlord and not the agent. The landlord confirmed the landlord's name should be that which was listed in the Tenancy Agreement. Therefore, I have made this decision naming the landlord as was listed in the Tenancy Agreement.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 25, 2021 for a month-to-month tenancy beginning on May 15, 2021 for a monthly rent of \$1,000.00 due on the 1st day of each month with a security deposit of \$500.00 paid.

The landlord has also submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on July 2, 2021 with an effective vacancy date of July 12, 2021 citing unpaid rent in the amount of \$1,310.00.

The landlord also provided as evidence, a copy of a Proof of Service – Notice to End Tenancy document confirming the landlord served the Notice to End Tenancy on July 2, 2021 at 10:35 a.m. by handing it personally to the tenant. The tenant submitted her Application for Dispute Resolution to seek to cancel the Notice to End Tenancy on July 5, 2021.

The landlord submitted that after issuing the Notice to End Tenancy the tenant as made some additional payments of rent, including one payment dated July 9, 2021 in the amount of \$350.00 and one on July 12, 2021 in the amount of \$450.00.

The landlord testified that as of the date of the hearing the tenant owes \$1,100.00 in unpaid rent.

Analysis

Section 46 allows 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. However, a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

In addition, within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

The section goes on to say that if a tenant who has received a notice under this section does not pay the rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

While the tenant submitted her Application for Dispute Resolution within 3 days of receiving it I find she did file her Application within the allowable 5 days after receiving the Notice to End Tenancy for Unpaid Rent, pursuant to Section 46(4). However, I also find that by failing to serve the landlord with her Application for Dispute Resolution, pursuant to Section 59(3) of the *Act* and failing to attend this hearing the tenant has failed to diligently pursue the requirements of Section 46(5). As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy and the tenancy must end.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the landlord for this application. I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$500.00 in satisfaction of this claim, pursuant to Section 72(2)(b).

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: November 01, 2021

Residential Tenancy Branch