



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- An order of possession for unpaid rent pursuant to sections 46 and 55; and
- A monetary order for unpaid rent pursuant to sections 26 and 67.

Both the landlord and the tenant attended the hearing. The landlord was represented by her counsel, TJ. As both parties were present, service of documents was confirmed. The tenant acknowledged receipt of the Notice of Dispute Resolution Proceedings, advising him of today's hearing by regular mail this past Monday. He does not acknowledge being served with the Notice of Dispute Resolution Proceedings regarding the hearing originally set for June 3rd.

Landlord's counsel advised that this hearing was originally set for June 3rd but was rescheduled by the Residential Tenancy Branch. She sent the tenant the Notice of Dispute Resolution Proceedings package regarding the original hearing via registered mail to the tenant's residence on March 4, 2022. It was returned as refused by the tenant. The tracking number for the mailing is recorded on the cover page of this decision. I deem the original Notice of Dispute Resolution Proceedings package served upon the tenant on March 9, 2022, five days after it was sent to the tenant via registered mail in accordance with sections 89 and 90 of the *Act*.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The tenant advised that his name on the landlord's application for dispute resolution was misspelled. I inquired as to the correct spelling of the tenant's surname and pursuant to section 64 of the *Act*, I corrected the landlord's application as the landlord had requested that I make the change. The corrected names appear on the cover page of this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. She owns the rental unit by herself, and she purchased it in 2008. She began renting it right after she bought it. The rental unit is a manufactured home situated atop a basement. The tenancy began in September 2008 with rent set at \$400.00 per month for the past 5 or 6 years. The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on January 31, 2022, and the landlord provided a proof of service document, signed by a process server who indicates it was served by leaving with a person who apparently resides with the tenant.

The landlord called the process server, VL who gave the following testimony. On January 31st, he attended at the tenant's residence, trying to serve the notice to end tenancy upon the tenant. An adult male was leaving the residence and stated he was not the named tenant, but that the tenant was inside the house. The male went back and told the tenant that there was someone to see him. Another adult male came to the door but wouldn't admit to being the tenant. This male got hostile and told the process

server to “get off my property”. The process server testified that the notice to end tenancy was not served at the tenant’s door but outside – where he dropped the document at the tenant’s feet in the snow. This happened at the “end of the pass”.

The tenant refutes the process server’s testimony, denying he got the notice to end tenancy. The tenant doesn’t know who the process server is, but if he’s the “guy who said he came here with papers”, then that guy threw the papers on the ground and never made it up to the tenant’s house. That guy’s car got stuck after he tried “peeling out” in the snow. After getting stuck, the process server asked the tenant if he would assist him in pushing his car out. The process server had to step over the papers he dropped on the ground in order to come to the tenant’s house to ask for a push. It was never delivered to the tenant.

A copy of the notice to end tenancy was provided as evidence. It states the tenant failed to pay \$5,200.00 in rent that was due on January 1, 2022. It is dated January 28, 2022 and is signed by the landlord. The landlord testified that the tenant hadn’t paid the previous 13 months rent. The last payment she received was in November 2020. When the tenant stopped paying, he told the landlord that he was going to move out at the end of May and not pay any more rent. The landlord didn’t have any further contact with the tenant until May when she thought the tenant was leaving.

The landlord had served the tenant with a previous notice to end tenancy and sought an Order of Possession by direct request. This application was dismissed with leave to reapply due to deficiencies and the file number for the previous dispute is recorded on the cover page of this decision.

The tenant gave the following testimony. He does not acknowledge that GA is his landlord. He argues that he and GA were once involved in a romantic relationship and lived together. When they lived together, he paid \$500.00 per month to GA, and it got reduced to \$400.00 per month when GA moved to Ontario about 4 years ago. All the payments were not rent, but there was an unwritten agreement that the payments were towards the tenant’s purchase of the home. The tenant claims the house is his, but acknowledges it is not registered in his name. To date, he has paid about \$60,000.00 to GA and the home is worth less than that. The tenant testified that there are no written documents to indicate the payments were towards paying off the home rather than rent. Instead, the tenant points to “everyone in his circle” knowing that this is the tenant’s home, not GA’s. Lastly, the tenant argues that he was paying the taxes on the house.

Analysis

Any document that are required or permitted under this *Act* to be given to or served on a person may be served by leaving a copy at the person's residence with an adult who apparently resides with the person pursuant to section 88(e) or with the person pursuant to section 88(a).

I find that the tenant was served with the landlord's notice to end tenancy in accordance with sections 88 of the *Act*. I make this finding since in testimony, the tenant recalled the process server got stuck in the snow at his residence the day the process server attended to serve the notice upon him. I find that on a balance of probabilities, the tenant was untruthful when telling the process server that he was not the tenant named in the notice to end tenancy on January 31, 2022.

Based on the process server's testimony, I am satisfied that the process server advised the tenant that he was at the tenant's residence to serve a notice to end tenancy and that the notice to end tenancy was dropped at the tenant's feet, on the residential property, but outside the tenant's house. I further note that in testimony, the tenant acknowledged that the process server had to step over the documents he dropped on the ground in order to ask him for assistance in getting unstuck from the snow after "peeling out". Pursuant to sections 88 and 90, the notice to end tenancy is deemed served the day it was personally served upon the tenant, on January 31, 2022.

The tenant did not pay the outstanding arrears as noted in the notice to end tenancy and did not file an application to dispute it. Pursuant to section 46, the tenant had 5 days to do either of those things.

Pursuant to section 55(2)(b) of the *Act*, a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Pursuant to section 55(4), In the circumstances described above, the director may, without any further dispute resolution process under Part 5, grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Although the tenant did not file an application to dispute the landlord's notice to end tenancy, he raised the argument that he is not the landlord's tenant. Based on the

tenant's acknowledgement that GA is the titled owner of the home, and that payments were made to GA respecting the possession of a rental unit, I find the tenant's argument baseless. The parties were bound by an implied tenancy agreement between a landlord and a tenant. The Residential Tenancy Act is applicable in this instance.

Pursuant to section 55(4), I grant the landlord an order of possession. As the effective date stated on the notice to end tenancy has passed, I grant the Order of Possession effective two days after service upon the tenant.

I grant the landlord a monetary order in the amount of \$5,200.00 representing unpaid rent as noted in the notice to end tenancy up until the end of January 2022. Since filing the Application for Dispute Resolution, the amount of arrears has increased. In accordance with rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3) of the Act I find it reasonable to amend the Application for Dispute Resolution to include additional arrears to include arrears for February, March, April, May and June at \$400.00 per month. (\$2,000.00). The landlord is granted a monetary order in the amount of \$7,200.00.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of \$7,200.00.

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: June 11, 2022

Residential Tenancy Branch