



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: LRE, CNR, OLC, FFT
 LL: FFL, MNR-DR, OPR-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application for Dispute Resolution was made on September 15, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 9, 2022 (the “10 Day Notice”);
- an order restricting the Landlord’s right to enter;
- an order that the Landlord comply with the *Act*; and
- an order granting the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on September 17, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord amended their Application on October 4, 2022 to increased the amount of unpaid rent, to include October 2022.

The Tenant and the Landlord’s Agent attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that they had their agent serve the Notice of Hearing to the Landlord. The Landlord’s Agent stated that they did not receive

the Notice of Hearing from the Tenant. The Tenant confirmed that they did not submit any proof of service.

The Landlord's Agent stated that they served the Tenant with their Notice of Hearing, and documentary evidence by Canada Post Registered Mail on October 2, 2022. The Landlord's Agent stated that they served the amendment to the Application by Canada Post Registered Mail on October 5, 2022. The Landlord provided copies of the registered mail receipts in support. The Tenant confirmed having received the Canada Post notice card, however, has yet to collect the mail from the post office. Pursuant to section 89 and 90 of the *Act*, I find the Tenant is deemed to have been served with the above-mentioned documents five days after their registered mailings.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure 3.1 (the "Rules of Procedure"); the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution: An application for dispute

resolution,...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 document]...*

The Residential Tenancy Branch Policy Guideline 12 (the "Policy Guidelines") states that; all parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

I find that the Tenant has provided insufficient evidence to demonstrate that they served the Landlord in a manner required by Section 89(1) of the *Act*. Furthermore, the Landlord's Agent stated that they have not received the Application package or documentary evidence from the Tenant. In light of the above, I dismiss the Tenant's Application without leave to reapply.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 15, 2021. Currently, rent in the amount of \$1,675.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$837.50 which the Landlord continues to hold. The Tenancy continues to occupy the rental unit.

The Landlord's Agent testified the Tenant did not pay rent when due on September 1, 2022. The Landlord's Agent stated that she subsequently served the Tenant is person with the 10 Day Notice on September 9, 2022 with an effective date September 22, 2022. The Landlord's Agent testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$1,675.00 to the Landlord which was due on September 1, 2022.

The Landlord's Agent stated that since serving the 10 Day Notice, the Tenant has not paid any amount towards the outstanding balance of rent owing. Furthermore, the Tenant has also failed to pay rent for October 2022. The Landlord's Agent stated that the Landlord is seeking a monetary order for unpaid rent for September and October 2022 in the amount of \$3,350.00. The Landlord is also seeking an order of possession.

The Tenant confirmed having received the 10 Day Notice on September 9, 2022. The Tenant confirmed that he has not paid rent to the Landlord for September and October 2022 in the amount of \$3,350.00. The Tenant stated that he was unable to pay the rent has he was going through a difficult time in his life.

Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act states 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) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

The Landlord's Agent testified she served the Tenant with the 10 Day Notice on September 9, 2022. The Tenant confirmed having received the 10 Day Notice on the same date. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the Act.

Accordingly, pursuant to section 46(4) of the Act, the Tenant had until September 14, 2022, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution.

While the Tenant submitted their Application to cancel the 10 Day Notice on September 15, 2022, I find that the Application was made late and outside the 5 days time limited permitted. Furthermore, I have found that the Tenant provided insufficient evidence to demonstrate that they served the Notice of Hearing to the Landlord, which has resulted in the dismissal of the Tenant's Application. Lastly, I accept that during the hearing, the Tenant acknowledged that they have not paid September and October 2022 rent to the Landlord in the amount of \$3,350.00.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid September and October 2022 rent in the amount of \$3,350.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$2,612.50, which has been calculated as follows:

| Claim | Amount |
|-------------------------------|-------------------|
| Unpaid rent: | \$3,350.00 |
| Filing fee: | \$100.00 |
| <i>LESS</i> security deposit: | -\$837.50 |
| TOTAL: | \$2,612.50 |

Conclusion

The Tenant has failed to pay rent and has breached the *Act* and the tenancy agreement. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,612.50. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 25, 2022

Residential Tenancy Branch