



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on December 3, 2022; and
- return of the filing fee pursuant to s. 72.

J.P. appeared as the Landlord’s agent. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advises that the Landlord’s application materials were served in three registered mail packages sent to the Tenant on January 12, 2023, January 20, 2023, and January 25, 2023, with the Notice of Dispute Resolution being served in the first package. These dates correspond with the dates upon which the evidence was provided to the Residential Tenancy Branch.

Rule 3.14 of the Rules of Procedure requires that applicants ensure their evidence has been served and received by respondents by no later than 14 days prior to the hearing. In this instance, the hearing took place on February 10, 2023 such that the last day evidence served by the Landlord would have to be received by the Tenant and comply with Rule 3.14 would be January 26, 2023.

Dealing first with the initial packages, I find that the packages of January 12, 2023 and January 20, 2023 were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received these portions of the Landlord's application materials on January 17, 2023 and January 25, 2023 respectively.

With respect to the final evidence package, I find that it was served late as I cannot confirm its receipt before the deadline and the deeming provision would mean it would be received late if applied. Given this, I find that it was not properly served such that it would be procedurally fair to include the additional evidence. It is, therefore, excluded and shall not be considered by me.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent confirms the following details regarding the tenancy:

- The Tenant moved into the rental unit on July 1, 2022.
- Rent of \$600.00 is due on the first of each month.
- The Tenant paid a security deposit of \$300.00.

The Landlord's evidence includes a copy of the tenancy agreement.

The Landlord's agent advises that the Tenant failed to pay rent on December 1, 2022. I am told by the agent that the 10-Day Notice was served on the Tenant by way of registered mail sent on December 3, 2022. I am advised by the agent that the Tenant did not retrieve the package until January 23, 2023.

A copy of the 10-Day Notice was put into evidence by the Landlord. The notice indicates an incorrect address for the rental unit in a portion of the form. When I enquired with respect to this issue, the Landlord's agent tells me that this was an error and due to her not correcting it from a precedent she had used.

The Landlord's agent further advises that the Tenant paid \$400.00 on December 23, 2022 and \$500.00 on January 21, 2023 and has not otherwise made any payment to the Landlord over the relevant period. The agent tells me that she is unaware of the Tenant filing an application disputing the 10-Day Notice.

The Landlord's agent confirms that the Tenant continues to reside within the rental unit and testifies that she spoke with the Tenant the day prior to the hearing who asked she not follow through with the hearing.

Analysis

The Landlord seeks an order of possession pursuant to the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I accept the undisputed evidence of the Landlord that the 10-Day Notice was served on the Tenant via registered mail sent on December 3, 2022. I find that this was done in accordance with s. 88(c) of the *Act*.

I am told that the Tenant did not retrieve the 10-Day Notice until January 23, 2023. Previously in the decision, I applied the deemed service provisions of the *Act* set out under s. 90. As made clear by Policy Guideline #12, which provides guidance on the service provisions, s. 90 of the *Act* forms an evidentiary presumption of receipt of a document that may be rebutted where fairness requires it. In this instance, the Tenant did not attend the hearing to explain why he did not pick up his mail. Policy Guideline #12 is also clear that simply refusing to pick up registered mail does not override the deeming provisions of the *Act*. In other words, I have been provided with no evidence that would rebut the presumption of receipt formed by s. 90 of the *Act*.

Given the above and pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on December 8, 2022.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice. The standard form provided by the Residential Tenancy Branch (RTB-30) lists the tenant's address in two locations: one place at the top of the page and a second at the bottom.

On this occasion, the 10-Day Notice incorrectly lists the rental unit address as some other address in one of the two portions of the form. I am told by the Landlord's agent that this was an error due to her use of a precedent.

Section 68(1) of the *Act* permits the director to amend a notice to end tenancy that does not comply with s. 52 of the *Act* where the person receiving it knew or should have known the information was omitted from the notice and, in the circumstances, it is reasonable to amend the notice. I find that it is appropriate to do so under these circumstances. I accept that the Tenant knew that 10-Day Notice applied to him as he asked the agent the day prior to the hearing that she not follow through with the application. The 10-Day Notice does list the rental unit address in one location, and incorrectly in the other location. I accept that this error is merely a technical issue rather than a substantive one, such that it is reasonable to amend the notice. After the correction, I find that the 10-Day Notice complies with the formal requirements of s. 52 of the *Act*.

Pursuant to s. 46(4) of the *Act*, a tenant has 5 days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. This is made clear at the very top of the 10-day notice to end tenancy, which states:

HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, I accept the Tenant did neither. He made partial payment of \$400.00 on December 23, 2022, which neither paid the overdue rent nor was it paid within 5 days of receiving the 10-Day Notice on December 8, 2022. I further accept that he did not file to dispute the 10-Day Notice. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is December 18, 2022.

As the Tenant continues to reside within the rental unit, I find that the Landlord is entitled to an order of possession.

Conclusion

The Landlord is entitled to an order of possession. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

The Landlord was successful in its application. I find it is entitled to its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord withhold \$100.00 from the security deposit held in trust for the Tenant in full satisfaction of its filing fee.

It is the Landlord's obligation to serve the order of possession. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: February 10, 2023

Residential Tenancy Branch