



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenant applied as follows:

- For cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act
- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

While the landlord attended the hearing by way of conference call, the tenant did not, although I waited until 9:40 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord was affirmed.

The landlord testified that he served the 10 Day Notice Dated January 5, 2023 with an effective date of January 31, 2023 by registered mail January 6, 2023. The landlord provided RTB 34 Proof of Service form in evidence as well as a Canada Post receipt and tracking number. Pursuant to sections 88 and 90 of the Act the tenant is deemed to have been served with the 10 Day Notice on January 11, 2023 in accordance with the Act

The landlord testified that he served his dispute notice and materials on the tenant by registered mail but did not provide proof of service in evidence. RTB Rules of Procedure state:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As the applicant landlord did not provide proof of service of the dispute package in evidence, I dismiss the landlord's application.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced on July 1, 2012 on a month to month basis. Rent was \$2,247.00 per month due on the first of the month. The landlord holds a security deposit of \$1,050.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that rent in the amount of \$2,247.00 was due on December 1, 2022. The tenant paid \$247.00 on December 21, 2022 leaving \$2,000.00 in rent outstanding. On January 1, 2023 rent of \$2,247.00 was due. The tenant paid only \$500.00 rent in January. Therefore the landlord issued the 10 Day Notice. The total amount of rent due as of the effective date of the 10 Day Notice was \$3,747.00.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenant.

The tenant did not appear; therefore I dismiss the tenant’s application to cancel the 10 Day Notice. The 10 Day Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant’s application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective two days from the date it is served on the tenant.

Section 55(1.1) of the Act requires me to grant a monetary order for unpaid rent if the requirements of section 55(1) of the Act are satisfied. I find that the requirements of section 55(1) of the Act are satisfied, and I am further satisfied based on the landlord’s evidence that the tenant owed \$3,747.00 in unpaid rent as of January 31, 2023. The landlord is entitled to compensation for unpaid rent in the amount of \$3,747.00.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession 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 \$3,747.00 for unpaid rent. The monetary order must be served on the tenant. 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: May 16, 2023