



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 3:20 p.m. in order to enable him to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on August 20, 2013. She gave sworn oral testimony supported by a written witnessed statement that she posted a copy of her dispute resolution hearing package on the tenant's door at 11:00 a.m. on September 4, 2013. I am satisfied that the landlord served the above documents to the tenant in accordance with sections 88, 89(2) and 90 of the *Act*. Her 10 Day Notice and dispute resolution hearing package seeking an Order of Possession were deemed served on the third day after their posting.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on July 15, 2012. After the expiration of the initial term of this tenancy, the tenancy continued as a periodic tenancy. Monthly rent is set at \$1,400.00, payable on the 15th of each month. The landlord continues to hold the tenant's \$700.00 security deposit paid on July 15, 2012.

The landlord's 10 Day Notice cited \$5,900.00 as owing as of August 15, 2013. The landlord testified that she has not received any payments towards this tenancy since

she posted the 10 Day Notice on the tenant's door. She said that she was uncertain as to whether the tenant continues to live in the rental unit.

Analysis

The tenant failed to pay the amount identified as owing in the 10 Day Notice in full within five days of being deemed to have received that Notice on August 23, 2013. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by September 3, 2013. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Service of an application for dispute resolution for a monetary award must be provided to the other party in accordance with section 89(1) of the *Act*. Posting a dispute resolution hearing package including a copy of the Notice of Hearing on a tenant's door is not one of the prescribed ways to serve notices under section 89(1). As I am not satisfied that the tenant has been properly served with the landlord's notice to seek recovery of the landlord's \$50.00 filing fee, I dismiss this portion of the landlord's application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. I dismiss the landlord's application for the recovery of her filing fee from the tenant.

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 11, 2013

Residential Tenancy Branch

