



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an application for dispute resolution by the landlord for an order of possession for unpaid rent and a monetary order for unpaid rent. On June 29, 2016, an Adjudicator adjourned the matter to a participatory hearing which was held on Thursday, August 11, 2016 at 11:00 a.m. Pacific Time.

The landlord attended the teleconference as scheduled and provided affirmed testimony. The landlord also presented her documentary evidence. I have described the evidence relevant to the matters before me below.

As the tenant did not attend the hearing, service of the Notice of an Adjourned Hearing (the “Notice of Adjourned Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Adjourned Hearing, and documentary evidence were served on the tenant by registered mail on July 13, 2016. The landlord confirmed that the Application; however, was not included in the registered mail package. The landlord testified that the tenant was served the Application on June 22, 2016 by leaving a copy of it with a person, P.K., who the landlord stated was an adult residing in the rental unit, and is a roommate of the tenant. The landlord provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the tenant and the address of the rental unit.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. According to the online registered mail tracking information the registered mail package was returned as “unclaimed” as of July 18, 2016. I find the tenant was duly served on July 18, 2016 which is five days after it was mailed. I note

that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*. The landlord testified that the tenant continues to occupy the rental unit as his personal items remain in the rental unit.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord was advised that the monetary portion of her Application could not be considered as she did not serve the original Application in a method described in section 89(1) of the *Act*. Therefore, **I dismiss the landlord's monetary claim with leave to reapply.**

Issue to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy began in October 2015. Monthly rent in the amount \$800.00 was due on the first day of each month during the tenancy. The tenant paid a \$400.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on June 22, 2016, through the direct request process after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated June 13, 2016 was served on tenant by posting to the tenant's door on June 13, 2016. A copy of the 10 Day Notice was submitted in evidence. The effective date listed on the 10 Day Notice is June 20, 2016 and indicates that \$800.00 in rent was owed as of June 1, 2016.

The landlord stated that the tenant has not paid rent for June, July or August of 2016 and continues to occupy the rental unit. The landlord is seeking an order of possession and testified that the tenant did not dispute the 10 Day Notice.

Analysis

Based on the undisputed documentary evidence and testimony provided by the landlord, and on the balance of probabilities, I find the following.

Order of Possession - I accept the landlord's undisputed testimony that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice, June 26, 2016. Pursuant to section 53 of the *Act*, incorrect effective dates of a Notice to End Tenancy automatically correct. The 10 Day Notice was posted to the door on June 13, 2016. Pursuant to section 90 of the *Act*, documents served by posting to the tenant's door are deemed received three days later which makes the deemed service date of the 10 Day Notice June 16, 2016. **I grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

As the landlord's application had merit, **I grant** the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. **I authorize** the landlord to retain **\$100.00** from the tenant's \$400.00 security deposit in full satisfaction of the landlord's recovery of the filing fee. As a result, I find the tenant's security deposit balance has been reduced from \$400.00 to \$300.00.

Conclusion

The landlord has been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit has been reduced from \$400.00 to \$300.00 as a result.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 11, 2016

Residential Tenancy Branch