



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") to obtain an order of possession for unpaid rent and a monetary order for unpaid rent. The landlord's Application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on November 14, 2016 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's Application.

The landlord appeared at the adjourned participatory teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The landlord testified that he sent the tenant a copy of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), along with his documentary evidence, by registered mail. The landlord testified that he sent the registered mailing to the rental unit on November 24, 2016. The landlord provided the Tracking Number to confirm the mailing. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenant has been deemed served with the Notice of Hearing and as of November 29, 2016, the fifth day after the registered mailing.

Issue(s) to be Decided

- Is the landlord entitled to an order for possession for unpaid rent, pursuant to s.55 of the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent pursuant to s.67 of the *Act*?

Background and Evidence

The landlord testified that a six month fixed term tenancy started on June 1, 2016 pursuant to a written tenancy agreement signed by the tenant on May 31, 2016. The rent is \$2,400.00 due on the first day of each month. The tenant did not provide a security deposit or pet damage deposit.

The landlord testified that he purchased the rental property on July 13, 2016 from the previous landlord who is named on the tenancy agreement. The landlord submitted documents relating to the purchase of the property in support of his testimony that he is now the landlord.

The landlord testified that on October 1, 2016 he only received rent in the amount of \$2,000.00 leaving \$400.00 of unpaid rent.

The landlord testified that on October 11, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which had an effective date of October 21, 2016, was posted to the tenant's door at 10:00 a.m. The 10 Day Notice indicates that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant did not pay the rent owing within the five days or file an Application for Dispute Resolution. The tenant did not move out of the rental unit and the landlord has not received rent for each of the months of November and December 2016.

Analysis

Based on the above undisputed testimony and documentary evidence, and on a balance of probabilities, I find the following.

I find that the tenant was required to pay rent in the amount of \$2,400.00 due on the first day of each month. I find that the tenant only paid \$2,000 for rent due for the month of October 2016. I also find that the tenant has not paid any rent for each of the months of November and December 2016.

Section 90 of the *Act* stipulates that a document that is posted on the door is deemed to be received on the third day after it is attached. Therefore, I find that the 10 Day Notice was received by the tenant on October 14, 2016, the third day after it was attached.

Section 46(1) of the *Act* stipulates that a 10 day Notice is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on October 14, 2016, I find that the earliest effective date of the 10 Day Notice is October 24, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this 10 Day Notice was October 24, 2016.

I find that the tenant was served with a 10 Day Notice that required the tenant to vacate the rental unit on October 24, 2016, pursuant to section 46 of the *Act*.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the 10 Day Notice to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice.

As the tenancy has ended pursuant to section 46(5), I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant.

Based on these findings, I grant the landlord a monetary Order for \$5,200.00 for unpaid rent as follows.

October Unpaid Rent	\$ 400.00
November Unpaid Rent	\$ 2,400.00
December Unpaid Rent`	\$ 2,400.00
Total	\$ 5,200.00

Conclusion

Pursuant to section 67, the landlord is granted a monetary order in the amount of \$5,200.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, 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.

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: December 22, 2016

Residential Tenancy Branch