



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on November 5, 2016 for an Order of Possession based on unpaid rent.

Only the Landlord's agent, E.A., called into the hearing. She confirmed that she has assisted the Landlord throughout. A letter sent on November 14, 2016 confirms that E.A. communicated as agent for the Landlord. I am satisfied that E.A. has authority to act on the Landlord's behalf.

E.A. gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

E.A. testified that the Notice of Hearing and the Landlord's Application for Dispute Resolution was posted on the rental unit door on November 11, 2016. A letter from H.W. confirms that he witnessed E.A. post the Dispute resolution Hearing Package to the rental unit door at 7:15 p.m. on November 11, 2016. Pursuant to sections 89(2)(d), and 90 of the *Residential Tenancy Act*, documents served this way are deemed served three days later; accordingly, I find the Tenant was duly served as of November 14, 2016 and I proceeded in his absence.

E.A. also testified that the Tenant is the Landlord's son, and has been in and out of jail since the tenancy began. She stated that to her knowledge he is currently incarcerated. E.A. also testified that she was informed that the Tenant's girlfriend, T.C., who is presently residing in the rental unit, received the application materials and provided them to the Tenant in jail.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

E.A. stated that to her knowledge the Tenant was incarcerated for approximately 19 years for a murder conviction. She stated that she was informed that the Tenant was released to a half-way house at some point in time in 2015.

E.A. stated that approximately one year ago, the Tenant moved into the rental unit. She further stated that initially this was without the Landlord's consent. She confirmed that she is the Strata Council President. She stated that the rental unit is owned by the Landlord and, due to the length of time he has owned the strata unit, he is permitted to rent to family members. Initially the strata council was unaware that the Tenant had moved in without the Landlord's consent. Due to the behaviour of the Tenant and his guests, the Strata Council informed the Landlord that fines would be levied. At this point in time they were made aware that the Tenant was there without the Landlord's consent.

E.A. further testified that the Landlord and the Tenant agreed in February of 2016 that the Tenant would pay "market rent" of \$900.00. This is also contained in the "Details of Dispute" section on the Application which was completed by the Landlord.

E.A. stated that the Tenant failed to pay the rent as required, although he did pay \$500.00 at some point in time to the Landlord.

E.A. stated that in the summer of 2016 the Tenant was again incarcerated for breaching his parole. E.A. stated that the Tenant abandoned the rental unit at that time. The Landlord attempted to regain possession of the rental unit, however, the Tenant's girlfriend T.C. refused to move out.

E.A. further testified that in September of 2016 the police attended due to thefts and break-ins that had occurred at the strata building. At this time members of the strata asked for the police to assist in removing T.C. and others who had moved in without the Landlord's consent. A letter introduced in evidence by the Landlord, written by C.D., the

Strata Manager, confirms the police would not assist stating this matter is to be dealt with as a tenancy matter.

On October 18, 2016 the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent indicating the amount of \$900.00 was due as of February 2016 (the "Notice").

Introduced in evidence was a copy of the Proof of Service—Notice to End Tenancy indicating that on October 18, 2016 the Notice was posted to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find the Tenant was served with the Notice as of October 21, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 26, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

E.A. confirmed that the Tenant failed to pay the outstanding rent, nor did he, or anyone acting on his behalf, apply to dispute the Notice.

Analysis

Based on the above, the undisputed testimony and evidence, and on a balance of probabilities, I find as follows:

I find that a tenancy was established between the Landlord and the Tenant in February of 2016. I further find that the Tenant agreed to pay monthly rent of \$900.00.

I accept E.A.'s undisputed testimony, as well as the evidence filed by the Landlord, that the Tenant failed to pay rent as required.

I find that the Tenant was served the Notice on October 21, 2016. I further find that the Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an Order of Possession of the rental unit effective two days after service on the Tenant. This order may be filed in the B.C. Supreme Court and enforced as an Order of that Court.

This Order of Possession requires that the Tenant, and any guest of the Tenant, or other person occupying the rental unit must deliver full and peaceable vacant possession and occupation of the rental unit to the Landlord not later than two (2) days after service of the Order.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

This decision is final and binding on the parties, except as 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