



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord, KA testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated December 8, 2016 was served on the tenant by regular mail. While the tenant denied receiving the 10 Day Notice I find that the landlord duly served the tenant in a manner in accordance with section 88 of the Act. Therefore, I find that the tenant was deemed served on December 13, 2016, five days after mailing in accordance with sections 88 and 90 of the Act.

The landlord, KA testified that the landlord's application for dispute resolution dated January 4, 2017 (the "Application") was sent to the tenant by registered mail on that date. KA provided a Canada Post tracking number as evidence. The tenant denied receipt of the Application, testifying that the post office has refused to release the item for pickup. The tenant testified that a copy of the Application was provided to the tenant by the landlord on January 25, 2017. Regardless of the tenant's failure to pick up the package at the post office I find that the landlord served the Application in a manner in accordance with section 89 of the Act. I therefore find, the tenant was deemed served with the Application on January 9, 2017, five days after mailing in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began in August, 2015. The current rent is \$604.00 payable on the first of the month. A security deposit of \$250.00 was paid by the tenant at the start of the tenancy. Rent payments have been paid in cash or by money orders. The landlord generally does not provide receipts for rent payments. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord, KA testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$604.00, the amount initially sought in the 10 Day Notice. She said that the tenant subsequently failed to pay the January rent on the first of the month. KA testified that the tenant made partial payment of \$908.00 on January 18, 2017 and \$604.00 on January 25, 2017. The landlord, GS testified that while payment was accepted from the tenant the amount was accepted for use and occupancy only and did not reinstate the tenancy.

The tenant's agent testified that he delivered the two payments in January and he was under the impression that the payments reinstated the tenancy. The tenant testified that the payments were made in cash slipped under the landlord's office door. The agent testified that there was no conversation in which he was explicitly told that the tenancy was reinstated.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$604.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. I accept the landlord's evidence that the payment of January 18, 2017 and January 25, 2017 were accepted for use and occupancy only. I find the fact that the landlord provided the tenant with a copy of the Application on January 25, 2017 sufficiently communicated the landlord's intention to continue to seek an end of this tenancy.

Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 23, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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 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: January 27, 2017

Residential Tenancy Branch