



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H.E. ROOMS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF

Introduction

This hearing took place by telephone conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on March 17, 2017 requesting an Order of Possession for unpaid rent and to recover the filing fee from the Tenant.

An agent for the company Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance by the Tenant during the six minute hearing or any submission of evidence prior to the hearing.

The Landlord's agent testified that the Tenant was served with a copy of the Application and the Hearing Package by posting it to the Tenant's door on March 17, 2017. Based on the undisputed evidence before me I find the Landlord correctly served the Tenant with the required documents for this hearing pursuant to Section 89(2) (d) of the Act.

Section 90(c) of the Act states a document posted to the door is deemed to have been received three days later. Therefore, I find the documents were deemed to have been received by the Tenant on March 20, 2017. The hearing continued to hear the undisputed evidence of the Landlord's agent as follows.

Issue(s) to be Decided

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

Background and Evidence

The Landlord's agent testified that the company Landlord took over this tenancy two years ago and they do not know when the tenancy started and do not have any tenancy

agreement. However, the Tenant paid rent in the amount of \$450.00 on the first day of each month and the Landlord retains \$225.00 in the Tenant's security deposit.

The Landlord's agent testified that the Tenant failed to pay rent on February 1, 2017. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on February 2, 2017. The 10 Day Notice was posted to the door with a witness who provided a signed Proof of Service document verifying this method of service into evidence.

The Landlord provided a copy of the 10 Day Notice into evidence which details a vacancy date of February 12, 2017 due to \$425.00 in unpaid rent payable on February 1, 2017. The Landlord's agent testified that the amount of rent outstanding on the 10 Day Notice was a clerical mistake and this should have read as \$450.00.

The Landlord's agent testified that the Tenant continues to occupy the rental unit without paying any rent since February 2017. Therefore the Landlord now seeks an Order of Possession to end the tenancy.

Analysis

I have carefully considered the undisputed testimony and the documentary evidence before me in this Decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute the 10 day Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Having examined the 10 Day Notice provided into evidence, I find the contents on the approved form comply with the requirements of Section 52 of the Act. I accept the undisputed oral and Proof of Service evidence before me that the 10 Day Notice was served to the Tenant by posting it to the rental unit door on February 2, 2017 in accordance with Section 88(g) of the Act.

As a result, the Tenant is deemed to have received the 10 Day Notice on February 5, 2017 and the vacancy date on the 10 Day Notice is now corrected to February 15, 2017 pursuant to Section 52 of the Act.

There is no evidence before me that the Tenant has paid the outstanding rent or filed an application to dispute it. As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the 10 Day Notice. Therefore, the Tenant would have had to vacate the rental unit on February 15, 2017.

As this date has now passed and the Tenant is still residing in the rental unit without paying rent, the Landlord is granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

Copies of this order for service and enforcement are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

As the Landlord has been successful in obtaining an Order of Possession, I award the Landlord the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. The Landlord may obtain this relief by deducting this amount from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act. The remaining amount of the Tenant's security deposit must still be dealt with in accordance with the Act.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession. The Landlord may recover the filing fee from the Tenant's security deposit.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 13, 2017

Residential Tenancy Branch