



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHILLIWACK KIWANIS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on April 7, 2017. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee from the Tenant.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as a copy of the notice to end tenancy. The Tenant failed to appear for the 11 minute hearing and provided no evidence prior to the hearing.

As a result, I turned my mind to the Landlord's service of paperwork for this hearing. The Landlord's agent testified that a copy of the Application and the Hearing package were served to the Tenant by attaching them to the Tenant's door on April 10, 2017.

Section 89 of the Act determines the methods of service for the Application. In relation to the Landlord's Application for an Order of Possession, I am able to accept the Landlord's method of service in accordance with Section 89(2) (d) of the Act. Section 90(c) of the Act provides that a document attached to a door is deemed to have been received three days after being posted. Therefore, based on the undisputed evidence before me, I find the Tenant was deemed served with the Landlord's Application for an Order of Possession on April 13, 2017.

However, an Application for a monetary claim cannot be served by attaching it to the Tenant's door and is limited to the methods stipulated by Section 89(1) of the Act. Therefore, as the Landlord's monetary Application has not been served to the Tenant in accordance with the Act, I am unable to consider this portion of the Application and I dismiss it with leave to reapply. As a result, I continued to hear the Landlord's undisputed evidence in relation to the Order of Possession.

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 this tenancy began on July 1, 2015 on a month to month basis. The Tenant's current rent is payable in the amount of \$324.00 on the first day of each month. The Tenant paid a \$365.00 security deposit which the Landlord still holds in trust.

The Landlord's agent testified that after September 2016, the Tenant started to pay rent for late and for some months the Tenant did not pay and for other months the Tenant would overpay. However, despite the Tenant being given sufficient opportunities and payment plans to catch up with rent, by March 2017 the Tenant had racked up \$1,468.00 in rental arrears.

As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), on March 24, 2017. The 10 Day Notice was placed into the Tenant's mail slot and shows a vacancy date of April 6, 2017 due to \$1,468.00 payable on March 1, 2017.

The Landlord's agent testified that the Tenant has also failed to pay rent for April and May 2017. As a result, the Landlord now seeks an Order of Possession to end the tenancy for unpaid rent.

Analysis

Having examined the 10 Day Notice, I find that the contents on the approved form complied with Section 52 of the Act. Based on the undisputed evidence of the Landlord's agent, I accept the Tenant was served the 10 Day Notice in her mail slot pursuant to Section 88(f) of the Act. As a result, using the deeming provisions of Section 90(d) of the Act, I find that the Tenant was deemed served with the 10 Day Notice three days later, namely on March 27, 2017.

Sections 47(4) and (5) of the Act provides that within five days of a tenant receiving a 10 Day Notice, the tenant must pay the overdue rent or make an Application to cancel it; if the tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit on the vacancy date of the 10 Day Notice.

There is no evidence before me that the Tenant paid the total amount of outstanding rent on the 10 Day Notice or made an Application to dispute it by April 1, 2017.

Therefore, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy on the vacancy date of April 6, 2017. As a result, the Landlord is entitled to an Order of Possession.

As the vacancy date on the 10 Day Notice has now passed and the Tenant continues to occupy the rental unit without paying rent, I find the Landlord is entitled to an Order of Possession effective 2 days after service on the Tenant. This order may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$50.00 filing fee for the cost of this Application. Pursuant to Section 72(1) (b) of the Act, the Landlord may recover this filing fee by deducting this amount from the Tenant's security deposit held by the Landlord.

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. The Landlord did not serve the Tenant with the monetary claim pursuant to the Act. Therefore, the Landlord's monetary claim is dismissed with leave to re-apply.

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: May 12, 2017

Residential Tenancy Branch