



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Point Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on September 18, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities.

The Landlord's Agents, J.K and K.M., provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Landlord's Agents testified that they both attended the rental unit in person on August 30, 2017, and left a copy of the Notice of Hearing along with supporting documentary evidence with the Tenant's spouse, S.M. The Landlord's Agents stated that they know S.M. lives with the Tenant as she was identified on a previous visit. I accept the Landlord Agents testimony that S.M. is an adult who apparently resides with the Tenant. Pursuant to section 89(2) of the *Act*, I find the Tenant received this package on August 30, 2017.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the 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 for unpaid rent or utilities?

Background and Evidence

The Landlord's Agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on November 1, 2014. Rent in the amount of \$1,150.00 is due on the first day of each month. The Landlord holds a security deposit of \$575.00.

The Landlord's Agents testified that when they took over management of the rental unit in May of 2017, the Tenant owed \$505.00 in past due rent from prior months. The Landlord's Agents testified that the Tenant has repeatedly only paid partial rent (often late), and at the time the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was issued, on July 12, 2017, the Tenant owed \$1,980.00 in past due rent, as specified on the worksheet from the Landlord. The Landlord also provided a copy of the 10 Day Notice along with the Proof of Service document, which shows that the 10 Day Notice was posted to the Tenants door on July 12, 2017, by the Landlord's Agent (witnessed by J.K.). After giving the 10 Day Notice to the Tenant, he made a payment of \$1,200.00 on July 27, 2017.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenant has not paid rent when due (\$1,980.00 on July 1, 2017).

On July 12, 2017, the Landlord issued the 10 Day Notice by posting a copy to the door of the rental unit. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the Tenant is deemed to have received the 10 Day Notice on July 15, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant paid \$1,200.00 on July 27, 2017, this is only part of the amount outstanding, and is well past the 5 days he was allowed to settle his arrears, after receiving the 10 Day Notice. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice (July 25, 2017). The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: September 18, 2017

Residential Tenancy Branch