



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for an Order of Possession for unpaid rent.

The hearing was convened by telephone conference call and was attended by the Landlord, and the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Landlord and Agent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that the Application and Notice of Hearing were sent to the Tenant at the dispute address by registered mail on August 23, 2017, and provided me with the registered mail tracking number. As a result, I find that the Tenant was duly served on August 28, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The Landlord testified that they purchased the building where the Tenant's rental unit is located in June, 2017. The Landlord and Agent testified that the tenancy with the above name Tenant pre-existed their ownership of the building, and that at the time of purchase, there was a verbal tenancy agreement in place between the Tenant and the original Landlord as follows. The Tenant agreed to rent the unit on a month to month basis for \$500.00 per month, the payment of which was due on the first of each month. The landlord testified that no security deposit was collected from the Tenant.

The Landlord testified that the Tenant has not paid any rent for June – September, 2017, and that as a result, a 10 Day Notice was served on the Tenant.

The 10 Day Notice in the documentary evidence before me, dated July 4, 2017, indicates that it was personally served on the Tenant on July 4, 2017, for the non-payment of July rent. The 10 Day Notice indicates an outstanding rent amount of \$500.00, due July 1, 2017, and an effective vacancy date of July 14, 2017. A signed Proof of Service of the 10 Day Notice (the "Proof of Service") is also before me for consideration which indicates that the 10 Day Notice was served on the Tenant in the manner described above.

The 10 Day Notice also states that the Tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

In the hearing the Landlord and Agent also testified that the Tenant recently signed a mutual agreement to move out by 5:00 pm on September 14, 2017, and that they believe that the Tenant has vacated the unit. However, the Landlord wanted to proceed with their application for an Order of Possession in the event that the Tenant has not vacated the rental unit or returns to the rental the unit after this hearing.

Analysis

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 the rent. When a Tenant does not pay rent when due, section 46 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 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on July 4, 2017, the day it was personally served on them. I also find that

the Tenant was obligated to pay the monthly rent of \$500.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, 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, July 14, 2017. In any event, even if the 10 Day Notice had not been effective, I find that the Tenancy would have ended by mutual agreement on September 14, 2017, at 5:00 pm.

As a result, I find that the Tenancy is ended and the Landlord is entitled to an Order of Possession.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: September 18, 2017

Residential Tenancy Branch