



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”) that was 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 who provided affirmed testimony. The Tenant did not attend. The Landlord was 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 Landlord testified that the Application, the Notice of Hearing, and their evidence package were sent to the Tenant on August 4, 2017, by registered mail. As a result, I find that the Tenant was duly served on August 9, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me; however, I refer only to the relevant facts and issues in this decision.

Preliminary Issues

On August 28, 2017, the Residential Tenancy Branch (the “Branch”) received, by fax, a one page document containing a copy of a cheque and a rent receipt. In the hearing the Landlord confirmed that they sent this evidence to the Branch in support of their Application. I advised the Landlord that the evidence was late, and inquired as to when and how it was served on the Tenant.

The Landlord testified that it had been sent to the Tenant by registered mail with the Application, the Notice of Hearing, and all other evidence on August 4, 2017, however, they had forgotten to submit it to the Branch until August 28, 2017. Based on the undisputed and affirmed testimony of the Landlord, I am satisfied that the late evidence was served on the Tenant in accordance with the *Act* and the Rules of Procedure.

In any event, I find that the admittance of the evidence does not prejudice the Tenant as it demonstrates that the Tenant paid rent, at least in part, to the Landlord. Further to this, I find that it is necessary, appropriate, and relevant to the dispute resolution proceeding and pursuant to section 75 of the *Act*, and Rules of Procedure, I accept the late evidence of the Landlord.

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 provided testimony in the hearing that an oral tenancy agreement existed between the Tenant and the landlord as follows. The Tenant was to assist in the renovation of 3 rental units and in addition to monetary compensation for their work, the Tenant would be allowed to reside in any of the rental units until renovations were complete.

The Landlord testified that as the renovations neared completion, the Tenant requested to rent one of the units. The Landlord testified that at the end of June 2017, an oral agreement was reached between both the Tenant and the Landlord that the Tenant would rent unit 202 from the Landlord on a month to month basis for \$1,000.00 a month, beginning July 1, 2017. The Landlord testified that they agreed that rent would be paid in full on the first of each month and that no security deposit was requested or paid.

The Landlord testified that the Tenant paid only partial rent in the amount of \$590.00 for July, 2017, and that although they continue to reside in the unit, the Tenant has failed to pay either the balance of the rent owed for July, 2017, or the \$1000.00 rent owed for the month of August, 2017.

The Landlord provided in the documentary evidence before me, a copy of the 10 Day Notice dated July 3, 2017, in the amount of \$410.00, with an effective vacancy date of July 13, 2017. The 10 Day Notice indicates that it was served on the Tenant on July 3,

2017, by attaching a copy to the door of the Tenant's rental unit. The Landlord has provided in the evidence before me, a signed Proof of Service of the 10 Day Notice (the "Proof of Service") indicating that the 10 Day Notice was served on the Tenant on the date and in the manner described above in the presence of a witness.

The 10 Day Notice states that the Tenant 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 testified that the Tenant continues to reside in the rental unit, and since serving the 10 Day Notice on the Tenant, the Tenant has not made any payments. The Landlord testified that as of the date of this hearing, the Tenant owes \$1,410.00 in rent for July, 2017, and August, 2017.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with the 10 Day Notice on July 6, 2017, three days after it was attached to their door. I also find that the Tenant was obligated to pay the monthly rent of \$1,500.00, 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 corrected effective date of the 10 Day Notice, July 16, 2017, and the Landlord is therefore 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 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 6, 2017

Residential Tenancy Branch