



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 July 18, 2017 requesting an Order of Possession for unpaid rent and to recover the filing fee from the Tenant.

The 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 21 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord 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 July 27, 2017. The Landlord provided a Proof of Service document signed by a witness to verify this method of service. Based on the undisputed evidence before me, I find the Landlord correctly served the Tenant with the required documents 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 July 21, 2017. The hearing continued to hear the undisputed evidence of the Landlord 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 this tenancy started on August 3, 2014 for a fixed term of one year which then continued on a month to month basis thereafter.

Rent pursuant to the signed tenancy agreement is payable by the Tenant in the amount of \$1,200.00 on the first day of each month. The Tenant paid the Landlord a \$600.00 security deposit at the start of the tenancy. The Landlord confirmed that he still holds the security deposit in trust.

The Landlord testified that the Tenant habitually paid rent late in this tenancy. The Landlord testified that by June 2017 the Tenant was in rental arrears of \$630.00. The Tenant then failed to pay rent for July 2017.

As a result, the Landlord served the Tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on July 6, 2017. The Landlord provided a Proof of Service document, which was signed by a witness verifying personal service to the Tenant. The Landlord provided a copy of the 10 Day Notice into evidence which details a vacancy date of July 16, 2017 due to \$1,830.00 in rental arrears due on July 1, 2017.

The Landlord testified that the Tenant continues to occupy the rental unit without paying any rent since the 10 Day Notice was served. 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 tenancy ends and must vacate the rental unit on the effective vacancy date of the 10 Day Notice.

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 personally served to the Tenant on July 6, 2017 in accordance with Section 88(a) of the Act.

There is no evidence before me that the Tenant has paid the outstanding rent or filed an application to dispute the 10 Day Notice. As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. Therefore, the Tenant would have had to vacate the rental unit by July 16, 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: October 04, 2017

Residential Tenancy Branch