



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and an evidentiary package was sent to the tenants by way of registered mail on December 14, 2017. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on December 19, 2017, the fifth day after its registered mailing.

The landlord testified that a second evidentiary package was sent to the tenants by way of regular mail on December 17, 2017. In accordance with sections 88 and 90 of the

Act, I find that the tenants were deemed served with the second evidentiary package on December 22, 2017, the fifth day after its mailing.

The landlord gave undisputed affirmed testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit on November 04, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served to the tenants on November 07, 2017.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave written evidence that his tenancy began on October 15, 2016, with a monthly rent of \$850.00, due on the first day of each month. The landlord confirmed that they are currently retaining a security deposit in the amount of \$425.00.

A copy of the signed 10 Day Notice identifying \$850.00 in unpaid rent owing for this tenancy dated November 04, 2017, with an effective date of November 17, 2017, was included in the landlord's evidence.

The landlord testified that upon giving the tenants a One Month Notice in October 2017, the tenants did not pay the rent for November 2017 and have not paid the monthly rent since. The landlord submitted that the tenants are still in the rental unit.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*. Based on the landlord's evidence and undisputed affirmed testimony, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. Due to the failure of the tenants to take either of these actions within five days, I find the tenants are conclusively presumed to have accepted the end of this tenancy by November 17, 2017, the effective date on the 10 Day Notice pursuant to section 46(5) of the *Act*.

In this case, the tenants and anyone on the premises were required to vacate the premises by November 17, 2017. As this has not have occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72 of the *Act*, I allow the landlord to retain \$100.00 for the filing fee from the existing security deposit, which is now reduced to \$325.00.

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: January 04, 2018

Residential Tenancy Branch