



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord and the Agents for the Landlord (the Agents”), all of whom provided affirmed testimony. The Tenant did not attend. The Landlord and Agents 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 these documents as explained below.

The Landlord and Agents provided a Proof of Service of Notice of Direct Request Proceeding as well as affirmed testimony in the hearing that the Application, the Notice of Direct Request, and the evidence package were personally served on the Tenant on October 21, 2017. As a result, I find that the Tenant was personally served the Application, the Notice of Direct Request, and the evidence package on October 21, 2017.

The Landlord and Agents also provided affirmed testimony that the Notice of Hearing was served on the Tenant by posting a copy to their door on October 28, 2017. As a result, I find that the Tenant was deemed served the Notice of Hearing on October 31, 2017, three days after it was posted to the door of their rental unit.

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.

At the Request of the Landlord, copies of the Decision and any applicable Orders will be e-mailed to both the Landlord and the Agents at the e-mail addresses provided in the hearing.

Preliminary Matters

On October 16, 2017, the Landlord applied for Dispute Resolution by Direct Request and on October 25, 2017, an interim decision was rendered in relation to this matter. In the interim decision the Adjudicator identified that one of the Respondents named in the Application, K.B., did not appear to have been properly served the Application and the Notice of Direct Request. As a result, the Adjudicator adjourned the matter to be heard at a participatory hearing.

In the participatory hearing the Landlord and Agents acknowledged that the tenant K.B. was not served with the Application, Notice of Direct Request, Notice of Hearing, or copies of their evidence in accordance with the *Act* and the Rules of Procedure as K.B. had already moved out of the rental unit at the time these documents were served at that address. However, The Landlord and the Agents wished to proceed with the Application listing only the tenant A.P. as the Respondent, as she was properly served all of the above noted documentation.

Based on the fact that K.B. was not served with the Application, Notice of Direct Request, or Notice of Hearing, and the undisputed testimony that this matter pertains only to an Order of Possession for the rental unit in which K.B. does not reside, I find that there is no prejudice to K.B. in removing them as a Respondent from the Application and I find that it would be reasonable to do so under the circumstances. The Application was therefore amended in accordance with the *Act* and the Rules of Procedure to list only A.P. as the Respondent.

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 tenancy agreement in the documentary evidence before me states that the tenancy began on September 1, 2017, and that rent in the amount of \$895.00 is due on the first day of each month. The Agent testified that the Tenant never paid the security deposit or any rent and that as a result a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) was served.

The 10 Day Notice in the documentary evidence before me, dated October 2, 2017, has an effective vacancy date of October 15, 2017, and indicates that as of October 1, 2017, the Tenant owed \$2,487.50 in outstanding rent. The Agent testified that the 10 Day Notice was personally served on an adult who apparently resides with the Tenant on October 2, 2017, and submitted a Proof of Service document signed by the person on whom the 10 Day Notice was served, acknowledging that they are an adult who resides with the Tenant.

The Landlord and Agents testified that no rent has been received since the start of the tenancy and that they believe that the rental unit has recently been abandoned. However, the Landlord

stated that they are still seeking an Order of Possession in the event that the property has not been abandoned by the Tenant.

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 section 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on October 2, 2017, the day it was personally served on an adult who apparently resides with the Tenant. I also find that the Tenant was obligated to pay the monthly rent of \$895.00, 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 (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) 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, October 26, 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 in the Supreme Court of British Columbia and 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: January 15, 2018

Residential Tenancy Branch