



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 3:28 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 2:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent provided sworn testimony that on April 3, 2018 the landlord's mother personally served both of the individually addressed Notice of Dispute Resolution hearing packages to Tenant K.Y. with the direction for him to give Tenant I.B. the package that was addressed to him. The landlord's agent testified that this was witnessed by the landlord. I find that the tenants were deemed served with the landlord's application for dispute resolution in accordance with sections 89(2)(a) and (c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to recover the cost of the filing fee for this application from the tenant?

Background and Evidence

The landlord's agent provided undisputed testimony regarding the following facts. The landlord purchased the rental property from Tenant K.Y. as he was one of the part-owners of the property. A verbal tenancy agreement was made with Tenant K.Y. which allowed him to stay in the basement rental unit of the property as a tenant, along with Tenant I.B., beginning August 1, 2016 on a month-to-month basis. The rent is \$1,000.00 payable on the first day of each month. No security deposit was collected from the tenants. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord's agent testified that the tenants have not paid any rent since August 2017 and that the amount of rent owing was \$7,000.00 at the time the 10 Day Notice was issued. The landlord's agent testified that the tenants have made no payments since the 10 Day Notice was served to them.

The landlord's agent provided sworn testimony that the tenants were served with the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) by Canada Post registered mail on March 2, 2018. The landlord's agent testified that the package had been returned as unclaimed. The landlord's agent further testified that the landlord's mother personally served Tenant K.Y. with the 10 Day Notice on March 10, 2018. The landlord's agent submitted documentary evidence including the Canada Post registered mail receipt with tracking number dated March 2, 2018 as proof of service of the 10 Day Notice.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord's agent; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

The landlord provided sworn testimony that when the 10 Day Notice sent by registered mail to the tenants was returned unclaimed, the landlord's mother personally served the notice on the tenants. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on March 10, 2018.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,000.00, as established in the verbal tenancy agreement. I also find, based on the landlord's undisputed submissions, that the tenants had failed to pay all rent owed at the time the 10 Day Notice was issued.

Section 46 of the *Act* provides, in part, the following:

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 accept the landlord's agent's undisputed evidence and find that the tenants did not pay the full amount of rent identified as owing in the 10 Day Notice to End Tenancy within five days of receiving the notice nor did the tenants apply to dispute the 10 Day Notice within five days of receiving the notice provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by March 17, 2018. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

As the landlord was successful in his application he may recover the \$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 tenants. Should the tenants or anyone 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 find that the landlord is entitled to a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is provided with these Orders in the above terms and the tenants must be served with these Orders as soon as possible.

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: April 26, 2018

Residential Tenancy Branch