



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADA HUA SHUO JIA HANG INTERNATIONAL TRADE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This decision pertains to the Landlord's application for dispute resolution made on May 28, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession of the rental unit.

The Landlord's legal counsel ("Counsel") attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Tenant did not attend the hearing.

Counsel testified that the Landlord served the Notice of Dispute Resolution Proceeding package (the "package") on the Tenant by Canada Post Xpresspost on June 1, 2018. The Landlord submitted into evidence a copy of the Canada Post Xpresspost receipt and tracking number, and, a photograph of the contents of the package prior to mailing

Canada Post's "Track a package" internet site indicates that the package was sent out for delivery on June 4, 2018, and that the "Item [was] refused by [the] recipient" on June 4 and June 5. Pursuant to section 90(a) of the Act, the package was deemed received by the Tenant on June 6, 2018. The fact that the Tenant refused to accept the package does not override the deeming provision, and receipt is deemed to have occurred on the fifth day after mailing (*Residential Tenancy Policy Guideline - 12. Service Provisions*, p. 12). I find that the Landlord served the Tenant in compliance with section 89(2)(b) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application is considered in my decision.

Issue to be Decided

Is the Landlord entitled to an order of possession of the rental unit?

Background and Evidence

Counsel testified that on February 9, 2018 the Landlord purchased a mixed-use (commercial and residential) building in which the rental unit is located. The Tenant was provided with a letter updating him on the name of the new landlord along with contact information regarding who he could call, and to whom he could pay the rent. The Landlord submitted into evidence a copy of the letter.

Shortly after the Landlord purchased the building, the Tenant stopped paying rent, and has not paid rent for March, April, May, June, and July 2018. The Landlord did not have a copy of the tenancy agreement, but Counsel testified that the Tenant has been living in the rental unit for some time, that monthly rent is \$500.00, due on the first of the month, and that the Tenant paid a security deposit of \$250.00.

Counsel further testified that the Landlord's employees attended at the rental unit on several occasions in March and April in order to collect the rent, but the Tenant did not pay the rent or respond to the Landlord's requests that he pay rent.

After unsuccessfully trying to collect rent, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and served the Tenant by attaching the Notice to the front door of the rental unit on May 3, 2018. The Notice was signed and dated on May 3, 2018, and indicated that the Tenant must vacate the rental unit by May 19, 2018. The Notice was deemed to be received by the Tenant on May 6, 2018, pursuant to section 90(c) of the Act. The Landlord submitted into evidence a copy of the Notice along with photographs depicting the Notice being taped to the door of the rental unit.

In reviewing the application and documents submitted, I noticed that the address of the rental unit as described in the Landlord's application differed from the address of the rental unit as described in the Notice. Counsel explained that because of the mixed-use nature of the building, the commercial address and the residential address were different, with each side facing a different street, but that both addresses referred to the same rental unit.

Analysis

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. The Landlord issued the Notice due to the Tenant's failure to pay rent. Pursuant to section 46 of the Act, the Notice informed the Tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an application for dispute resolution.

Counsel testified, and provided documentary evidence to support his submission, that the Tenant did not pay rent when it was due for March to July 2018, inclusive. There is no evidence before me to find that the Tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that he applied to cancel the Notice.

Subsection 55(2)(b) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the Tenant's failure to pay rent and failure to apply for dispute resolution, I hereby grant an order of possession of the rental unit to the Landlord.

Conclusion

The Landlord is granted an order of possession of the rental unit for unpaid rent. This order must be served on the Tenant and is effective two days after service on the Tenant. This order may be filed in 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 subsection 9.1(1) of the Act.

Dated: July 19, 2018

Residential Tenancy Branch