



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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 section 55 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:57 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and the landlord's assistant (herein referred to as "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. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the tenant with the Notice of Dispute Resolution Proceeding package for this hearing. Witness S.L., who is the property caretaker, was called upon to provide sworn testimony that she posted the Notice of Dispute Resolution Proceeding package on the tenant's rental unit door on June 7, 2018.

I find that the tenant was deemed served with the landlord's notice of this dispute in accordance with sections 89 and 90 of the *Act* on June 10, 2018, three days after posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

A written tenancy agreement was not submitted into documentary evidence, however, the landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began April 19, 2018. The monthly rent is \$1,000.00 payable on the first day of the month. The tenant paid only \$125.00 towards the security deposit of \$500.00 due at the start of the tenancy. The tenant continues to reside in the rental unit at the time of the hearing.

The tenant failed to pay rent when due on May 1, 2018. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) by posting it to her rental unit door on May 18, 2018. The landlord submitted into documentary evidence a copy of the 10 Day Notice and a Proof of Service signed by a witness to the service, in support of his sworn testimony. The 10 Day Notice stated an effective vacancy date of May 31, 2018 for when the tenant would be required to move out of the rental unit.

The landlord testified that the tenant failed to pay rent on June 1, 2018 when due. The landlord acknowledged that the tenant provided a payment of \$500.00 on June 15, 2018. The landlord stated that the tenant was provided with a receipt marked to denote the payment "for use and occupancy only". The landlord testified that the tenant has not paid rent for July 2018 or made any other payments. As of the date of the hearing, the landlord stated that the tenant was in rental arrears of \$2,500.00.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the unchallenged testimony of the landlord regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent in the amount of \$1,000.00, due on the first day of the month, as established in their agreed upon tenancy agreement.

Further to this, I find that there is no evidence before me to conclude that the tenant had any other right to withhold rent from May to July 2018, and therefore she remained obligated to pay rent for these months when due.

I accept the evidence before me that the 10 Day Notice was served on the tenant by posting on her rental unit door on May 18, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on May 21, 2018, three days after posting.

I accept the evidence before me that the tenant failed to pay the full rent due or dispute the 10 Day Notice within the five-day time limit allowed under section 46(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the stated effective date of the 10 Day Notice, May 31, 2018.

In light of the above, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant 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.

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: July 24, 2018

Residential Tenancy Branch