



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This hearing dealt with the Landlord adjourned Direct Request Application filed under the Residential Tenancy Act, (the “*Act*”), to request an order of possession to enforce a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) served on July 1, 2018, pursuant to section 46 of the *Act*. The matter was set for a conference call.

The Landlord and the Property Manager attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that the Tenant had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail, sent on July 28, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However only the evidence relevant to the issues and findings in this matter are described in this decision

Issue to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 1984. Rent in the amount of \$1,196.00 is to be paid by the last day of each month, and the Landlord is not holding a security deposit or pet damage deposit for this tenancy.

The Landlord testified that she served the Notice to the Tenant on July 1, 2018 in person. The Notice has an effective date of July 11, 2018 and an outstanding rent amount of \$1,196.00. The Landlord also testified that the Tenant did not pay the outstanding rent within five days of receiving the Notice. The Landlord is requesting that the Notice be enforced and that an order of possession be issued.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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 find that the Tenant did not pay the rent or dispute the Notice within the legislated timeline, and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if 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.

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Tenant did not pay the rent or file to dispute the Notice within the legislated timeline. Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant 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 the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 17, 2018

Residential Tenancy Branch