



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This matter originally proceeded by way of direct request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (“Act”), and dealt with an application for dispute resolution by the landlord for an order of possession for unpaid rent and/or utilities and a monetary order for unpaid rent and/or utilities. On September 7, 2018, an adjudicator adjourned the matter to a participatory hearing which was held this date on Tuesday, October 23, 2018 at 11:00 a.m. Pacific Time. The Interim Decision dated September 7, 2018 should be read in conjunction with this decision.

An agent for the landlord (“agent”) and an assistant for the agent (“assistant”) attended the teleconference as scheduled and provided affirmed testimony. The agent also presented documentary evidence. I have described the evidence relevant to the matters before me below.

As the tenant did not attend the hearing, service of the original application were considered. The assistant testified that the Notice of Dispute Resolution Hearing (“Notice of Hearing”) was served on the tenant by posting to the tenant’s door on September 4, 2018. In addition, the assistant testified that the Notice of Adjourned Hearing was served on September 21, 2018 also by posting the tenant’s door. The agent testified that the tenant continues to occupy the rental unit.

Preliminary and Procedural Matters

At the outset of the hearing, the agent was advised that the monetary portion of their application could not be considered as landlord did not serve the original application in a method described in section 89(1) of the *Act*. Therefore, **I dismiss the landlord’s monetary claim with leave to reapply due to a service issue.**

In addition to the above, the agent confirmed the email address of the landlord and also confirmed the tenant's email address both of which are included in the landlord's application. As such the decision will be emailed to the parties and any applicable orders will be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent and/or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed-term tenancy began on February 1, 2017 and reverted to a month to month tenancy after January 31, 2018.

The landlord applied for dispute resolution on August 28, 2018, through the direct request process after a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 10, 2018 ("10 Day Notice") was served on tenant by posting to the tenant's door on July 10, 2018. A copy of the 10 Day Notice was submitted in evidence. The effective vacancy date listed on the 10 Day Notice was July 24, 2018 which has passed and indicates that \$3,624.32 in rent was owed as of July 1, 2018 and that \$360.04 was owed in unpaid utilities also.

The agent stated that the tenant did not dispute the 10 Day Notice, and has not paid any rent or utilities since before the 10 Day Notice was served. The landlord is seeking an order of possession.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agent and assistant, and on the balance of probabilities, I find the following.

Order of Possession - I accept the agent's undisputed testimony that the tenant failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice, July 24, 2018. The 10 Day Notice was posted to the door on July 10, 2018. Pursuant to section 90 of the *Act*, documents served by posting to the tenant's door are deemed received three days later which makes the deemed service date of the 10 Day

Notice July 13, 2018. I **grant** the landlord an order of possession pursuant to section 55 of the *Act* effective **two (2) days** after service on the tenant.

I find the tenancy ended on July 24, 2018.

Due to a service issue for the monetary claim, I do not grant the filing fee.

Conclusion

The landlord has been granted an order of possession effective two (2) days after service on the tenant, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The monetary claim is dismissed with leave to reapply due to a service issue.

The tenancy ended on July 24, 2018.

I do not grant the filing fee due to the service issue described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 23, 2018

Residential Tenancy Branch