



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR-DR

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46.

Issue(s) to be Decided

The landlord's agent JH appeared for the landlord ("the landlord"). The landlord provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present affirmed oral and written evidence.

The tenants did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for, plus an additional twenty minutes, to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the tenants were individually served with the Notice of Hearing and Application for Dispute Resolution by registered mail on August 16, 2018 and deemed received by the tenants five days later under section 90, on August 21, 2018. The landlord provided the Canada Post tracking numbers referenced on the first page of the decision in support of service. Pursuant to sections 89 and 90, I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution on August 21, 2018.

Background and Evidence

The landlord testified that the parties entered into a signed month-to-month residential tenancy agreement commencing October 1, 2017 for monthly rent of \$2,200.00 payable on the last day of the month. A copy of the tenancy agreement was submitted.

The landlord testified the tenants paid a security deposit of \$1,100.00 at the beginning of the tenancy which is held by the landlord. The tenants have not provided the landlord with written authorization to apply the deposit to outstanding rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") dated August 1, 2018, for \$2,200.00 in unpaid rent. A copy of the Ten-Day Notice was submitted as evidence.

The landlord testified the Ten-Day Notice was personally served on the tenant TP on August 1, 2018 thereby effecting service that day pursuant to sections 88 and 90. The landlord submitted a copy of a signed, unwitnessed Proof of Service Notice to End Tenancy form in support of service.

The Ten-Day Notice provides the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of August 11, 2018.

The landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy indicating rent outstanding as stated above at the time the Ten-Day Notice was served.

The landlord testified the tenants did not pay the full amount of the rent owing within the five-day period after service of the Ten-Day Notice. The landlord testified the tenants made a payment of \$1,700.00 on August 1, 2018 and a second payment of \$500.00 on August 10, 2018. No payment for rent due on August 31 or September 31, 2018 was received. The landlord provided uncontradicted testimony that \$4,400.00 remains owing to the landlord for outstanding rent at the time of the hearing.

The landlord testified the tenants continue to occupy the premises.

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the tenant TP was served with the Ten-Day Notice on August 1, 2018 in accordance with sections 88 and 90 of the *Act*. As the tenant DL was separately served with the Notice of Hearing and Application for Dispute Resolution, I find the tenant DL was sufficiently served with the Ten-Day Notice pursuant to section 71 of the *Act*.

I find the tenants did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the notice of August 11, 2018, requiring the tenant to vacate the rental unit by that date.

As the tenants continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Conclusion

I grant the landlord an order of possession **effective two (2) days** after service on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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: October 05, 2018

Residential Tenancy Branch