



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, 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 46 of the *Act*, and
- the recovery of the filing fee for this application pursuant to section 72 of the *Act*.

The Landlord attended the teleconference hearing. The Tenant did not attend. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing (the Notice). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord was sworn-in and was given a full opportunity to provide sworn testimony and present evidence.

The Landlord testified the Tenant was served with the Notice and Application for Dispute Resolution (the Application) by registered mail sent to the rental unit on July 20, 2018. The landlord provided a copy of the Canada Post tracking number in support of service. In accordance with Sections 89 and 90 of the *Act*, the Tenant is deemed to have been served on July 26, 2018, the fifth day after mailing. I find the tenant was served as required by Section 89 of the *Act*.

Preliminary Issue:

The Landlord filed an amendment to the Application to correct the dispute address from Upper to Lower. At the hearing the Landlord requested that the Tenant's name be corrected to reflect the correct spelling. As per Rules of Procedures (the Rules) section 4.1 and 4.2 I find the amendments to be in accordance with the Rules.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have considered all the documentary evidence and the undisputed testimony presented by Landlord, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The Landlord provided undisputed testimony that the tenancy began at the end of December 2017. The Tenant took possession of the rental unit on Jan 1, 2018. The rental agreement was a verbal agreement and the rent was set at \$650 per month, payable on the first of each month. The Tenant paid a security deposit in the amount of \$325. The Tenant continues to reside at the rental unit.

The Landlord testified that the Tenant is routinely late paying the rent and pays the rent in two payments, contrary to the agreement.

The Landlord issued a 10 Day Notice to End Tenancy (the 10 Day Notice) on July 2, 2018, after reminding the Tenant numerous times that rent is due in full, on the first of each month. The 10 Day Notice was served by taping it to the rental unit's door on July 2, 2018, and is deemed received by July 5, 2018. The Landlord submitted in evidence a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door on the afternoon of July 2, 2018.

The 10 Day Notice provided that the tenant 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 July 12, 2018, corrected to July 15, 2018.

The Tenant eventually paid July's rent; however, it was more than five days after the 10 Day Notice was served. The Tenant currently owes \$50 for August 2018 rent and \$300 for September 2018 rent.

The Landlord testified that he now seeks an Order of Possession based on the 10 Day Notice.

Analysis

I have reviewed the documentary evidence and find that the Tenant was obligated to pay the monthly rent of \$650 in full on the first of the month as per the verbal tenancy agreement. I accept the undisputed evidence submitted by the Landlord that the Tenant failed to pay the rent in full or dispute the notice within the five days as per section 46(4) of the *Act*.

I find the documentary evidence was served in accordance with sections 88 and 90 of the *Act*.

Furthermore, I find that the Tenant is conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected date of the 10 Day Notice being July 15, 2018.

I find the Landlord is entitled to an Order of Possession effective two days after service on the tenant.

As the Landlord was successful in this application, I find the Landlord is entitled to recover the \$100 filing fee paid for this application.

The Landlord has leave to file a monetary claim for any unpaid rent.

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.

Pursuant to section 72 of the *Act*, I grant the Landlord a monetary award in the amount of **\$100** for the recovery of the filing fee for this application. Should the tenant fail to

comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 12, 2018

Residential Tenancy Branch