



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with an application by the landlord for the following:

- An order of possession pursuant to section 46; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The hearing was conducted by teleconference. The landlord attended the hearing and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present 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 ten 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 tenants had been provided.

The landlord testified the tenants were served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 27, 2018 and under section 90 deemed received by the tenant five days later, on August 1, 2018. The landlord provided the Canada Post tracking numbers 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 1, 2018.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement for a one-year term commencing April 13, 2018 for monthly rent of \$1,500.00 payable on the first of the month. The landlord submitted a copy of the residential tenancy agreement.

The landlord testified the tenants paid a security deposit of \$750.00 at the beginning of the tenancy which is held by the landlord. The tenants have not provided the landlord with written authorization to retain the security deposit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") dated May 16, 2018 for \$1,640.00 in unpaid rent. A copy of the Ten-Day Notice was submitted as evidence.

The landlord submitted a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the Ten-Day Notice was posted to the tenants' door on May 16, 2018 thereby effecting service three days after posting on May 19, 2018, pursuant to sections 88 and 90.

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 May 26, 2018, corrected to May 29, 2018.

The landlord testified the tenants made no payments on outstanding rent after service of the Ten-Day Notice. The landlord provided uncontradicted testimony the full amount claimed in the Ten-Day Notice remains unpaid and owing to the landlord.

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 tenants were served with the Ten-Day Notice on May 19, 2018 in accordance with sections 88 and 90 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 (being the corrected date of May 29, 2018) requiring the tenants to vacate the rental unit by that date.

As the tenants continue 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.

As the landlords were successful in this application, I grant a monetary order in the amount of \$100.00 for reimbursement of the filing fee.

Conclusion

I grant the landlord a monetary order in the amount of **\$100.00** for the filing fee paid by the landlord for the Application.

This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 fails 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: September 13, 2018

Residential Tenancy Branch