



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1010287 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU-DR

Introduction

On August 2, 2018, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent and Utilities, pursuant to sections 46 and 55 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:28 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent attended the hearing on behalf of the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that he had served the tenants with the Notice of Dispute Resolution Proceeding package for this hearing. The landlord's agent testified that the two tenants listed on the tenancy agreement had been served individually with the Notice of Dispute Resolution Proceeding packages, and with the landlord's evidence, by Canada Post registered mail on August 9, 2018. The landlord's agent submitted into documentary evidence the two Canada Post registered mail tracking numbers (recorded on the cover sheet of this decision) as proof of service. The landlord's agent testified that he did not believe the tenants picked up the packages from the post office.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing when it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenants were served with the notice of this hearing and the landlord's evidence on August 14, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities?

Background and Evidence

A written tenancy agreement was submitted into documentary evidence. The landlord's agent provided the following undisputed testimony regarding the tenancy:

- This month-to-month tenancy began August 20, 2017.
- Current monthly rent of \$1,500.00 is payable on the first of the month.
- The tenants paid a security deposit of \$725.00 and a pet damage deposit of \$725.00 at the beginning of the tenancy.
- The tenancy agreement requires that the tenants pay for their utilities.
- The current landlord purchased the rental property October 28, 2017 and assumed this existing tenancy.
- The tenants continue to reside in the rental unit at the time of the hearing.

The landlord's agent testified that the tenants usually paid the monthly rent in cash, in person to the landlord's agent. The landlord's agent testified that the tenants had not paid any rent for the months of June, July, August and September 2018.

The landlord's agent testified that he received a notice from the municipality that the tenants were in arrears for payment of electricity service. A copy of the notice, dated March 13, 2018, was submitted into documentary evidence by the landlord.

The landlord's agent testified that he provided the tenants with a written demand letter dated June 11, 2018 for payment of the electricity bill in the amount of \$898.00, by leaving it in their mailbox. The landlord submitted a copy of this letter into documentary evidence but did not provide proof of service to confirm when this written demand letter was sent to the tenants.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (10 Day Notice) dated July 17, 2018, by Canada Post registered mail on July 18, 2018. The landlord submitted into documentary evidence a copy of the registered mail tracking number (recorded on the cover sheet of this decision) as proof of service.

The 10 Day Notice stated an effective vacancy date of July 28, 2018 for when the tenants would be required to move out of the rental unit. The 10 Day Notice also stated that \$3,000.00 in rent was owed as of July 1, 2018 and \$898.00 in utilities as of June 11, 2018.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

The landlord's agent provided undisputed evidence at this hearing, as the tenants did not attend. Based on the unchallenged testimony of the landlord's agent regarding the terms of the tenancy agreement, I find that the tenants were obligated to pay monthly rent in the amount of \$1,500.00, due on the first day of the month, as established in their agreed upon tenancy agreement.

Further to this, I find that there is no evidence before me to conclude that the tenants had any right to withhold rent for the months of June and July 2018, and therefore the tenants remained obligated to pay rent for these months when due.

I accept the evidence before me that the 10 Day Notice was served on the tenants by Canada Post registered mail on July 18, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on July 23, 2018, five days after mailing.

I note that the landlord's notice provided an incorrect effective vacancy date of July 28, 2018. Section 53 of the *Act* provides that when an effective vacancy date stated in a notice is earlier than the earliest date permitted under the applicable section, the effective date is automatically corrected to the earliest date permitted. Given that the 10 Day Notice was deemed received by the tenants on July 23, 2018, the corrected effective vacancy date is 10 days from the date deemed received, which is August 2, 2018.

I accept the evidence before me that the tenants failed to pay the full rent due or dispute the 10 Day Notice within the five-day time limit allowed under section 46(4) of the *Act*. Accordingly, I

find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, August 2, 2018.

Given that I have found that the tenancy has ended due to the tenants' failure to pay rent when due, I have not considered the landlord's grounds for ending the tenancy based on unpaid utilities as this is a moot point in this case.

In light of the above, I find that the landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises 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 authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 24, 2018

Residential Tenancy Branch