



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 22 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to speak on behalf of the landlord company named in this application, as an agent at this hearing. He provided written authorizations to this effect.

At the outset of this hearing, the landlord confirmed that he was not pursuing the landlord's application to recover the \$100.00 filing fee paid for this application. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An "interim decision," dated August 28, 2018, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision, notice of reconvened hearing and application package to the tenant. The landlord

testified that the tenant was served with the above documents on August 29, 2018 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision, notice of reconvened hearing and application package on September 3, 2018, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's original application for dispute resolution by direct request on August 18, 2018, by way of registered mail. The landlord provided a Canada Post receipt with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on August 23, 2018, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on August 4, 2018 by way of posting to the rental unit door. The notice indicates an effective move-out date of August 14, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 7, 2018, three days after its posting.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on February 1, 2017 with the former landlord. Monthly rent in the amount of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant and the landlord received and retains this deposit from the former landlord. A written tenancy agreement was signed with the former landlord and the tenant. The landlord purchased the rental unit on May 15, 2018 and the landlord provided a Declaration of Trust and a land title search to confirm same. The tenant continues to reside in the rental unit. The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$650.00 due on August 1, 2018. The landlord testified that a cheque, dated July 25, 2018, was received by the landlord from the Ministry for August 2018 rent of \$650.00 on behalf of the tenant. He claimed that it

was received on August 13, 2018, despite the fact that those cheques are usually issued well in advance of the rent due date. He provided a copy of this cheque and on the back of the cheque the landlord wrote: "For use and occupancy only. This does not re-instate your tenancy agreement." He explained that the copy of this cheque was provided to the tenant on August 28, 2018 with the second mailing of the interim decision documents. After the hearing was over, the landlord emailed the Residential Tenancy Branch indicating that he provided this cheque to the tenant on August 18, 2018 with the mailing of the landlord's original application.

The landlord said that he was not aware of any outstanding rent owed by the tenant for September 2018.

Analysis

Section 26 of the *Act* requires a tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$650.00 on August 1, 2018 or within five days of being deemed to have received the 10 Day Notice on August 7, 2018. The tenant paid the full rent on August 13, 2018, which is one day late past the five day deadline of August 12, 2018. In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to apply to cancel the notice within five days, led to the end of this tenancy on August 17, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 17, 2018.

I find that the landlord did not reinstate this tenancy by accepting August 2018 rent or September 2018 rent after the effective date of the notice. The landlord wrote that the August 2018 cheque was being accepted for use and occupancy only and provided a copy to the tenant in August 2018 after receipt of the cheque. The landlord continued to pursue this application for an order of possession by serving not only the original application on August 18, 2018, but also the interim decision and notice of reconvened hearing documents to the tenant on August 29, 2018 and appearing at this hearing. The tenant did not dispute the 10 Day Notice or either of the landlord's applications for the order of possession.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant 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.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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 25, 2018

Residential Tenancy Branch