



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

On July 9, 2018, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend the hearing. The Landlord provided a solemn affirmation.

The Landlord advised that a Notice of Hearing package, including his evidence, was served to the Tenant by registered mail on July 12, 2018 and a receipt was provided to confirm service (the registered mail tracking number is provided on the first page of this decision). As well, a copy of the Notice of Hearing package and evidence was placed on the Tenant’s door on July 12, 2018. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was deemed to have received the respective Notice of Hearing package and evidence three days after it was posted on the door and also deemed received as it was sent by registered mail.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that he purchased the house in February 2017 and assumed the Tenant and existing tenancy agreement. Rent was currently \$850.00 per month, due on the first of each month and a security deposit of \$200.00 was transferred to him from the previous owners of the house.

The Landlord submitted that the Tenant had been in arrears for April, May, and June 2018 rent. He stated that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was served to the Tenant on June 19, 2018 by posting to the door. The Landlord also provided a signed proof of service document corroborating that this Notice was posted on the door on June 19, 2018. The Notice indicated that \$2,550.00 was outstanding on June 1, 2018 and the effective end date of the Notice was June 29, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As outlined above, the undisputed evidence is that the rent for April and May 2018 was not paid. Furthermore, rent was not paid for June 2018 in full when it was due, nor was it paid within 5 days of the Tenant being deemed to have received the Notice. In addition, the undisputed evidence is that the Tenant did not dispute the Notice. As the Landlord's Notice is valid, as I am satisfied that the Notice was deemed received in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord **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.

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 7, 2018

Residential Tenancy Branch