



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR

Introduction

This decision pertains to the landlord's application for dispute resolution made on August 10, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following relief:

1. an order of possession for unpaid rent pursuant to section 55 of the Act; and,
2. a monetary order for unpaid rent pursuant to section 67 of the Act.

The landlord's application was by way of direct request proceeding, which was adjourned to a participatory hearing. A dispute resolution hearing was convened on October 9, 2018, and the landlord's agent attended the hearing, was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord provided documentary evidence that the Notice of Hearing package was served on the tenants by way of registered mail, and by posting a copy to the tenant's front door of the rental unit. The tenant failed to pick up the package.

Pursuant to Residential Tenancy Policy Guideline 12, "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." Given the above, I find that the tenant was deemed served with the Notice of Hearing package pursuant to sections 89(2)(b) and 90(a) of the Act.

Further, I hereby correct the address of the rental unit pursuant to a request and clarification by the landlord's agent.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord's agent testified that the tenancy commenced June 1, 2014, and monthly rent was originally \$750.00, due on the first of the month. Currently, the monthly rent is \$900.00, which is due on the first of the month. The tenant did not pay a security or a pet damage deposit.

The tenant is currently residing in the rental unit.

According to the landlord's agent's testimony, the tenant has failed to pay rent for April, May, June, July, August, September, and October 2018, and is in arrears in the amount of \$4,096.00.

On July 27, 2018, the landlord mailed (by registered mail) the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The tenant failed to pick up the Notice.

Submitted into evidence by the landlord was a copy of the written tenancy agreement, a copy of the Notice, copies of registered mail documentation, and a monetary order worksheet.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days of service.

The Notice also explains that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

There is no evidence before to find that the tenant has paid any of the rent owed, nor is there any evidence before me to find that the tenant applied for dispute resolution. As such, taking into consideration all of the evidence and the unchallenged testimony of the landlord's agent, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim regarding unpaid rent for the months of April to October 2018, inclusive.

For the reasons set out above, I find that the landlord is entitled to a monetary award for unpaid rent in the amount of \$4,096.00, and so grant an order in this amount.

Order of Possession

Section 55(1)(b) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the tenant's failure to pay rent for the months of April to October 2018, inclusive, and regarding the tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I grant an order of possession to the landlord. This order is effective two days after service upon the tenant.

Conclusion

I grant the landlord an order of possession which must be served on the tenant and is effective two days from the date of service. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I grant the landlord is granted a monetary order in the amount of \$4,096.00. This order must be served on the tenant and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 9, 2018

Residential Tenancy Branch