



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the Residential Tenancy Act, (the "*Act*"), to enforce a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) served on October 3, 2018, and to recover the filing fee for his application. The matter was set for conference call.

The Landlord's Property Manager (the "Landlord") attended the hearing. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that the Tenant had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail, sent on October 22, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision

Issues to be Decided

- Is the landlord entitled to an Order of Possession, pursuant to section 46 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on October 1, 2015, as a month to month tenancy. Rent in the amount of \$1,870.00 is to be paid by the first day of each month. The Tenant paid the Landlord an \$875.00 security deposit.

The Landlord testified that he served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) to the Tenant on October 3, 2018, by posting it to the front door of the rental unit. The Notice has an effective date of October 13, 2018, and an outstanding rent amount of \$1,870.00 for October 2018.

The Landlord also testified that the Tenant paid the outstanding amount indicated on the Notice on October 13, 2018. The Landlord testified that he had not been served with an application to show that the Tenant had disputed the Notice.

The Landlord testified that the Tenant had not paid the outstanding rent within five days as required, and they he is seeking an Order of Possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

In this case, I find that the Tenant received the Notice on October 7, 2018, three days after it was posted to the door of the rental unit, pursuant to the deeming provisions in section 90 of the *Act*. Consequently, I find that the Tenant had until October 12, 2018, to either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I accept the undisputed testimony of the Landlord that the Tenant paid the rent on October 13, 2018. I find that the Tenant did not pay the rent or dispute the Notice within the legislated timeline and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not paid the rent within the required timeline or disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Tenant did not pay the rent or file to dispute the Notice within the legislated timeline. Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I grant an **Order of Possession** to the landlord effective **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.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the award contained in my decision.

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: November 27, 2018

Residential Tenancy Branch