



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EASYRENT REAL ESTATE SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR FFL

Introduction

On October 24, 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, pursuant to sections 46 and 55 of the *Act*,
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*, and
- recovery of the cost of the filing fee for this application from the tenants.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent S.R., accompanied by another agent S.B., attended the hearing on behalf of the corporate landlord and were 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 had been 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 the tenant did not attend the hearing, I asked the landlord's agent to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was served with the notice of this hearing, and the Interim Decision dated October 24, 2018, by Canada Post registered mail on October 25, 2018. The landlord's agent provided a registered mail tracking number as proof of service (noted on the cover sheet of this Decision). The landlord's agent testified that the package was returned "unclaimed" by the tenant.

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 if 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 tenant was deemed served with the notice of this hearing on October 30, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

The landlord's agent advised that the landlord submitted an Amendment request to the Residential Tenancy Branch on November 14, 2018 to increase the amount of the monetary order from \$1,690.00 to \$3,380.00 as the tenant failed to pay rent for November 2018, in addition to October 2018. The landlord's agent testified that the Amendment was served to the tenant by Canada Post registered mail on November 16, 2018 and submitted a registered mail tracking receipt as proof. In accordance with the deeming provisions of section 90 of the *Act*, this package was deemed received by the tenant on November 21, 2018, the fifth day after mailing. Rule 4.6 of the Residential Tenancy Branch Rules of Procedure requires that an Amendment to an Application must be received by the respondent **not less than 14 days before the hearing**. As the tenant was deemed in receipt of the Amendment less than 14 days before this hearing, I find that the landlord's Amendment was not served in accordance with the Rules of

Procedure. Therefore, the landlord's request for the Amendment is dismissed. The landlord is at liberty to file a new application to seek compensation for any monetary loss not covered in the original application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence confirming the following terms of this tenancy:

- This tenancy began on August 1, 2017 as a one-year fixed-term tenancy scheduled to end on July 31, 2018. At the end of the fixed term, the tenancy converted to a month-to-month tenancy and continues on that basis.
- Current monthly rent is \$1,690.00 payable on the first day of the month.
- The tenant paid a security deposit of \$812.50 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's agent testified that the tenant failed to pay rent when due on October 1, 2018. As such, on October 5, 2018 the landlord mailed, by regular mail, to the tenant's rental unit a 10 Day Notice to End Tenancy for Unpaid Rent (herein referred to as the "10 Day Notice"). The landlord submitted into documentary evidence a proof of service signed by the employee who served the 10 Day Notice by regular mail. The employee who served the 10 Day Notice also attended the hearing as a witness. Witness S.F. confirmed that, on October 5, 2018 at approximately 3:00 p.m., both pages of the 10 Day Notice were sent by regular mail in an envelope addressed to the tenant at his rental unit address by being deposited into the Canada Post mail box located outside of the corporate landlord's office building.

The landlord's agent testified that the landlord also sent a copy of the 10 Day Notice to the tenant by email, and submitted a copy of the email into evidence. The email advised the tenant that a copy of the 10 Day Notice was sent to them in the mail.

The landlord's agent testified that the tenant has not made any payments since being served with the 10 Day Notice, nor has the landlord received any notice from the tenant that they intend to dispute the notice. The landlord's agent has been unable to contact the tenant by telephone or email. On October 27, 2018, having provided the tenant with the required notice, the landlord's agent accessed the rental unit for an inspection. The landlord's agent noticed that some old furniture items were in the rental unit, but there were no personal items or belongings, such as clothing, left in the rental unit. Therefore, the landlord is unsure if the tenant still resides in the rental unit.

The landlord's agent testified that the landlord is seeking an Order of Possession on the grounds of unpaid rent for the month of October 2018 and a monetary order for unpaid rent for October 2018.

Analysis

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

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.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

Therefore, based on the testimony of the landlord's agent and the submitted documentary evidence, I find that the tenant was obligated to pay monthly rent in the amount of \$1,690.00 by the first day of the month, as established in the written tenancy agreement and associated rent increases, and that the tenant failed to pay rent for the month of October 2018.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$1,690.00 for unpaid rent owing for the month of October 2018.

Section 46 of the *Act* provides, in part, the following:

46 (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.

I note that the 10 Day Notice submitted into evidence clearly outlines at the top of the first page that the tenant may face eviction if the tenant does not pay the rent to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch within five days.

I accept the testimony of witness S.F. that the 10 Day Notice was served to the tenant by regular mail on October 5, 2018. As such, the tenant was deemed in receipt of the 10 Day Notice on October 10, 2018, the fifth day after mailing.

I accept the testimony provided by the landlord's agent that the tenant did not pay the amount of rent identified as owing on the 10 Day Notice nor did the tenant apply to dispute the 10 Day Notice within five days of receiving the notice, as provided under section 46(4) of the *Act*.

In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective vacancy date of the notice. In this case, this required the tenant to vacate the premises by October 20, 2018. As that has not occurred, and the effective vacancy date has passed, I find that the landlord is entitled to an Order of Possession effective two days after service on the tenant.

As the landlord was successful in his Application, I find the landlord is entitled to recover the cost of the \$100.00 filing fee for this application from the tenant. I have included this amount in the total amount of the Monetary Order issued to the landlord.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order 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.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,790.00 in satisfaction of my finding that the landlord is entitled to a monetary award for unpaid rent owing for the month of October 2018, and entitled to recover the \$100.00 filing fee from the tenant. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is provided with these Orders in the above terms and the tenant must be served with these Orders as soon as possible.

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: December 03, 2018

Residential Tenancy Branch