



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

Introduction

On October 22, 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 tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:54 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord was hospitalized at the time of the hearing, therefore, the landlord's agent J.E. attended the hearing on behalf of the landlord and was 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 and I were the only ones who had called into this teleconference.

As the tenants did not attend the hearing, I asked the landlord's agent to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that both tenants were individually served with the notice of this hearing, and the Interim Decision dated October 22, 2018, by Canada Post registered mail on October 24, 2018. The landlord's agent provided two registered mail tracking numbers as proof of service (noted on the cover sheet of this Decision). With the agreement of the landlord's agent, during the hearing I accessed the Canada Post website to check the tracking report for these packages. The tracking report indicated that both packages were returned "unclaimed".

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 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 tenants were deemed served with the notice of this hearing on October 29, 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 amount of unpaid rent of \$1,127.50 claimed in the application only accounted for October 2018. The landlord's agent requested to amend the application to include the additional accrued unpaid rent of \$1,127.50 for the month of November 2018. Therefore, the landlord requested a total claim of \$2,255.00 (2 x \$1,127.50) in unpaid rent. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to include unpaid rent for November 2018, since the tenants continue to reside in the rental unit and can reasonably have anticipated that they would be held responsible for this rent payment.

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 month-to-month tenancy began on April 1, 2006.
- Current monthly rent is \$1,127.50 payable on the third day of the month.
- No security deposit or pet damage deposit was collected by the landlord at the beginning of the tenancy.

The landlord's agent testified that the tenants failed to pay rent when due on October 3, 2018. As such, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (herein referred to as the "10 Day Notice") on the tenants' rental unit door on October 4, 2018. The landlord had no witness to this posting, nor was the landlord available to provide first-hand testimony at the hearing to confirm the posting of the notice.

The landlord's agent called on Witness H.M., the landlord's wife, and Witness I.C. the landlord's daughter to provide their testimony. Witness H.M. testified to seeing the 10 Day Notice on the tenants' door around October 6 or 7, 2018. Witness I.C. could not testify to when the 10 Day Notice was posted as she was not in the area on October 4, 2018, however, she could testify that she saw that the 10 Day Notice was no longer on the tenants' door as of October 12, 2018.

The landlord's agent testified that the landlord also sent a copy of the 10 Day Notice to each tenant individually by Canada Post registered mail on October 18, 2018. The landlord's agent provided two registered mail tracking numbers as proof of service (noted on the cover sheet of this Decision). With the agreement of the landlord's agent,

during the hearing I accessed the Canada Post website to check the tracking reports for these packages. The tracking reports indicated that both packages were delivered.

The landlord's agent testified that the tenants have failed to make any rent payment for the month of October 2018 and that they have also not made any rent payment for November 2018. Therefore, the total amount of rental arrears is \$2,255.00.

The landlord's agent testified that the landlord is seeking an Order of Possession on the grounds of unpaid rent.

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 although the 10 Day Notice used by the landlord is an older version of the Residential Tenancy Branch form #RTB-30, 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 tenants were obligated to pay monthly rent in the amount of \$1,127.50 by the third day of the month, as established in the written tenancy agreement and associated rent increases, and that the tenants failed to pay rent for the months of October and November 2018.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$2,255.00 for unpaid rent owing for the months of October and November 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.

Although the landlord's documentary evidence claimed that he served the tenants with the 10 Day Notice by posting it on their door on October 4, 2018, the landlord was unavailable to testify to this at the hearing, and there were no witnesses to this service. As such, I have not found that the tenants were served with the 10 Day Notice until it was sent to them individually by Canada Post registered mail on October 18, 2018. The registered mail tracking report stated that the 10 Day Notice was delivered on October 24, 2018. Therefore, I find that the tenants were served with the 10 Day Notice on October 24, 2018.

I accept the testimony provided by the landlord's agent that the tenants did not pay the amount of rent identified as owing on the 10 Day Notice nor did the tenants 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 corrected effective date of the notice. In this case, I have deemed the tenants served with the 10 Day Notice on October 24, 2018, this required the tenants to vacate the premises by November 3, 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 tenants.

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 tenants. 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 tenants. Should the tenants 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 tenants in the amount of \$2,355.00 in satisfaction of my finding that the landlord is entitled to a monetary award for unpaid rent owing for the months of October 2018 and November 2018, and entitled to recover the \$100.00 filing fee from the tenants. Should the tenants 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 tenants 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 3, 2018

Residential Tenancy Branch