



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 an application by the landlord under the Residential Tenancy Act (the Act) for the following:

- An order of possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice to End Tenancy") under sections 46 and 55; and.
- Recovery of the filing fees of this application from the tenant pursuant to section 72.

The landlord attended the hearing, but the tenant did not. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call in number and participant code for the tenant had been provided. The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlord testified he personally served the tenant with the Notice of Hearing and Application for Dispute Resolution on November 27, 2018. The landlord filed a signed and witnessed Proof of Service. Further to the uncontradicted evidence and testimony of the landlord, I find that the tenant was duly served with the Notice of Hearing and Application for Dispute Resolution in accordance with section 89 Act on November 27, 2018.

Issues to be Decided

- Is the landlord entitled to an order of possession pursuant to sections 46 and 55?
- Is the landlord entitled to recover his filing fee for this application pursuant to section 72?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a Notice to End Tenancy dated November 16, 2018 for \$700.00 in unpaid rent due on November 1, 2018, with a stated effective vacancy date of November 26, 2018;
- A copy of the witnessed Proof of Service of the Notice showing that the landlord served the Notice to the tenant by personal delivery to the tenant on November 16, 2018; and
- Copies of electronic communications between the landlord and the tenant.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution, failing which the tenancy would end on the effective date of the Notice.

The landlord testified the tenancy commenced on October 31, 2018. The parties agreed to a monthly rent of \$700.00 payable on the first day of the month. the There was no written tenancy agreement.

The landlord testified that the tenant agreed to pay \$350.00 for a security deposit on move-in. However, tenant did not pay the security deposit. The landlord testified that the tenant paid the landlord \$120.00 for rent approximately one week after the tenant moved in and a further \$330.00 about one week later. The landlord testified that tenant did not make any further payments.

The landlord issued a Notice to End Tenancy for non-payment of rent containing an effective move-out date of November 26, 2018. The landlord testified he personally served it upon the tenant on November 16, 2018.

The landlord testified the tenant did not pay the outstanding rent or file an application for dispute resolution within 5 days of service.

The tenant continues to reside in the unit. The landlord requests an order of possession.

Analysis

I have reviewed all of the evidence and testimony. I will refer to only relevant evidence in my decision.

I find that the \$120.00 payment and the \$330.00 payment by the tenant were partial payments of the November 2018 rent. I find that the tenant has not paid any security deposit to the landlord.

I find the form and content of the Notice to End Tenancy complies with section 52 of the *Act*.

I find the landlord served the tenant with the Notice to End Tenancy on November 16, 2018 in accordance with section 88 of the *Act*. I find the tenant did not pay the overdue rent within the five days following service or apply for dispute resolution.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, November 26, 2018, requiring the tenant to vacate the rental unit by that date. I therefore grant the landlord an order of possession effective two days after service.

Further, since the landlord has prevailed in this matter, I award the landlord recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. This order must be served 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 the landlord a monetary order in the amount of **\$100.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be enforced as an order of that Court.

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: January 09, 2019

Residential Tenancy Branch