



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on November 20, 2018, a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord, her Agent and a support person (the “Landlord”) attended the hearing, and each were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on December 19, 2018. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Property Manager was provided with the opportunity to present her 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.

Preliminary Matter

During the hearing, the Landlord testified that she was aware that the Tenant had not been living in the rental unit, since September 2, 2018.

Section 89 of the Act, sets out special rules for the service of certain documents.

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 87.5 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

I find that the Landlord served the Tenant the copy of her Application for Dispute Resolution and the Notice of Hearing documents to an address in which the Landlord

knew the Tenant was not residing. Therefore, I find that the Tenant had not been duly served notice of the Monetary claim against him in accordance with the Act.

Consequently, I dismiss the Landlord's claim for a monetary order for unpaid rent with leave to reapply.

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 May 1, 2018, as a one-year fixed tenancy; rent in the amount of \$1,400.00 is to be paid by the first day of each month and that the Tenant had paid a \$700.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that she had noticed that the Tenant had left town on September 2, 2018, during an inspection of the rental unit. The Landlord testified that she reached out to the Tenant, via email, to see if he would be coming back and to inquire as to why the Tenant had put a stop payment on the September 2018 rent cheque. The Landlord testified that the Tenant emailed back saying that he would be coming back; however, as of the date of this hearing, the Tenant had not returned to the rental unit and had not paid the rent for September, October, November, December 2018, and January 2019.

The Landlord testified that she served the Tenant with the Notice to end tenancy by posting it to the front door of the rental unit on November 20, 2018, with an effective date of December 1, 2018. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord submitted a copy of the Notice to end tenancy into documentary evidence.

The Landlord testified that as of the date of this hearing the Tenant had not paid the outstanding rent. The Landlord testified that she is uncomfortable declaring the rental

unit abandoned and is requesting an Order of Possession and a Monetary Ordre to enforce her Notice.

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.

I accept the undisputed testimony of the Landlord, and I find that the Tenant did not pay the rent or dispute the Notice 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 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.

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 the 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.

I dismiss the Landlord's claim for a monetary order for unpaid rent with leave to reapply.

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 28, 2019

Residential Tenancy Branch