



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On November 10, 2018, the Landlord applied for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 22, 2018, the Landlord’s Application was set down for a Dispute Resolution Proceeding on January 8, 2018 at 11:00 AM.

The Landlord attended the hearing; however, the Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlord confirmed that she served the Tenant the Notice of Hearing package and evidence by registered mail (the registered mail tracking number is on the first page of this decision) on November 25, 2018. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for the unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on November 1, 2014 and that rent was established at \$1,200.00 per month, due on the first day of each month. A security deposit of \$550.00 was also paid. She submitted a copy of the tenancy agreement as documentary evidence.

The Landlord submitted that the Tenant began a relationship with her daughter and they subsequently had a baby. She advised that the Tenant had had issues paying rent in the past and had stopped paying rent entirely in March 2016. As she was concerned for the welfare of the baby, she did not take action when rent went unpaid and simply let them stay there. As a result, the Tenant stopped paying rent entirely. Eventually, the baby was removed from the care of the Tenant. The Landlord stated that without the baby to consider, she could no longer absorb the costs associated with owning the home without receiving rent so served the Notice to the Tenant by registered mail on October 6, 2018 which indicated that \$37,200.00 was outstanding on October 1, 2018. The effective end date of the Notice was noted as October 21, 2018. The Landlord advised that the Tenant did not pay the rent for November or December 2018 either.

The Landlord stated that this was still a tenancy between the parties and there were no verbal or written agreements to indicate otherwise. She applied for an Order of Possession for the unpaid rent as well as monetary compensation in the amount of **\$35,000.00** for the outstanding rent. However, she stated that she was no longer seeking this compensation.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was served the Notice on October 6, 2018. According to Section 46(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was served by registered mail, the Tenant would have been deemed to have received the Notice on October 11, 2018. After being deemed to have received this Notice, the fifth day would have fallen on October 16, 2018. Thus, the Tenant must have paid the rent in full or made an Application to dispute the Notice by this day at the latest. However, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Furthermore, the Tenant did not dispute the Notice within the required timeframe.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

~~As the Landlord is not seeking compensation for the unpaid rent, I dismiss this claim in its entirety.~~ As my understanding is that the Landlord is not seeking compensation for the unpaid rent during the hearing, the Landlord is at liberty to reapply at a future date. As such, I dismiss this claim with leave to reapply.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord that is 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.

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: February 8, 2019

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **FEBRUARY 8, 2019**
AT THE PLACES INDICATED **BY UNDERLINING OR USING ~~STRIKETHROUGH~~**.