



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This participatory hearing was convened after the issuance of a February 05, 2019, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord.

The Adjudicator reconvened the landlord's application to a participatory hearing for an Order of Possession pursuant to section 55 of the *Residential Tenancy Act (the Act)*.

The tenant did not attend this hearing, although I waited until 9:41 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of the Hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord's agent and the landlord's manager attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent (the landlord) stated that they would be the primary speaker during this hearing.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) was sent to the tenant by way of registered mail on February 08, 2019. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on February 13, 2019, the fifth day after its registered mailing.

The landlord provided written evidence that the evidence was posted to the tenant's door on February 01, 2019 as a part of a direct request proceeding package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the evidence on February 04, 2019, the third day after its posting.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord gave written evidence that this tenancy began July 02, 2018, with a monthly rent in the amount of \$700.00, due on the first day of each month. The landlord confirmed that they retain a security deposit in the amount of \$350.00.

A copy of the signed 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 04, 2019, with an effective date of January 14, 2019, and identifying \$2,350.00 in unpaid rent, was included in the landlord's evidence. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of the notice.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that the 10 Day Notice was posted to the tenant's door on January 01, 2019.

The landlord testified that the tenant is still in the rental unit and has not paid any money towards the unpaid rent noted on the 10 Day Notice since it was served to the tenant. The landlord requested an Order of Possession.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served to the tenant on January 04, 2019, the third day after its posting.

Based on the landlord's evidence and undisputed sworn testimony, I find that the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice.

In accordance with sections 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on January 14, 2019, the effective date of the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by January 14, 2019.

As this has not yet occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

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 any occupant 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.

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: March 21, 2019

Residential Tenancy Branch