



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

On February 5, 2019, the Landlord applied for a dispute resolution 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”).

Both the Landlord and the Tenant attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that she served the Tenant the Notice of Hearing package and evidence by registered mail on February 7, 2019; however, she stated that this went unclaimed. She submitted that she then hand served this package to the Tenant on February 19, 2019 with the presence of the police and the Tenant confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package and evidence.

The Tenant advised that he did not submit any evidence for consideration on this file.

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?

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.

Both parties agreed that the tenancy started on August 1, 2018 and rent was established at \$530.00 per month, due on the first day of each month. A security deposit of \$265.00 was paid.

The Landlord testified that the Notice was served to the Tenant by posting it on his door on January 24, 2019 with a witness. The Notice indicated that \$530.00 was outstanding on January 1, 2019. As well, the Notice indicated that \$205.00 was outstanding due to a written demand given to the Tenant on December 27, 2018. However, as there was no written demand, I advised the Landlord that only the rent portion of the Notice would be considered. The effective end date of the tenancy was noted as February 6, 2019 on the Notice.

The Landlord advised that the Tenant only paid \$325.00 of December 2018 rent and he did not pay January, February, or March 2019 rent at all.

The Tenant confirmed that he received the Notice a few days after January 24, 2019. He confirmed that he only paid \$325.00 towards December 2018 rent and he withheld January, February, and March 2019 rent due to issues of harassment by the Landlord. In addition to not paying the rent as directed on the Notice, he stated that he did not dispute the Notice either.

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 deemed to have received the Notice on January 27, 2019, three days after it was posted to the door. According to Section 46(4) of the *Act*, the Tenant has 5 days to 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 fifth day fell on February 1, 2019, the Tenant must have made his Application or paid the rent in full by this day at the latest. As outlined above, 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 receiving the Notice. Moreover, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

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 Section 46 of the *Act*.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession 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 8, 2019

Residential Tenancy Branch