



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- An order for possession pursuant to section 46 and 55.

I conducted this hearing by teleconference. The landlord attended and provided affirmed testimony. The landlord made submissions as well as presented oral and written evidence.

The tenants did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for ten minutes to allow the tenants 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 tenants had been provided.

The landlord testified the landlord served the tenant with the Application for Dispute Resolution and supporting documents pursuant to section 89 of the *Act* by registered mail sent on March 14, 2019. The landlord provided the Canada Post tracking number for the registered mail referenced on the first page of this decision. Pursuant to sections 89 and 90, I find the landlord served the tenants on March 19, 2019, the 5th day after mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

The landlord testified that the parties entered into a signed residential tenancy agreement commencing February 1, 2017. Rent is currently \$645.50 a month payable on the first of the month. The landlord submitted a copy of the agreement signed by both parties.

The landlord testified the tenants did not pay a security deposit at the start of the tenancy.

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Nonpayment of Rent ("the Ten-Day Notice") dated February 12, 2019 and testified the landlord served the Ten-Day Notice on the tenants by registered mail sent on February 12, 2019 and deemed received by the tenants five days later pursuant to section 90, that is, on February 17, 2019. The landlord also provided uncontracted affirmed testimony that the tenant had not paid any rent since that time and a balance of \$645.50 remains owing. The landlord filed a witnessed Proof of Service Notice to End Tenancy form and provided the Canada Post tracking number for the Registered Mail referenced on the first page of this decision.

The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of February 28, 2019 as evidence. The Notice requires the tenants to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days.

The landlord testified the tenants did not pay the rent owing or file an Application for Dispute Resolution within five days and a balance of \$645.50 remains owing.

The tenants have made no subsequent payments and continued to reside in the rental unit.

The landlord submitted a ledger listing all payments made by the tenant. The landlord provided uncontradicted testimony that rent is owing in the amount stated.

The landlord did not request a monetary order for outstanding rent or reimbursement of the filing fee of \$100.00.

The landlord requested an order of possession effective two days after service.

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I find the tenants were served with the Ten-Day Notice on February 17, 2019 in accordance with sections 88 and 90 of the *Act*.

I find the tenants did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 46(5), the tenants are conclusively presumed to have accepted the tenancy ends on the effective date of the Notice (being February 28, 2019) requiring the tenants to vacate the rental unit by that date.

As the tenants continued to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenants.

This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia 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: April 29, 2019

Residential Tenancy Branch