



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTY MANAGEMENT LTD. AS AGENT FOR
BROOKMERE GARDENS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL OPRM-DR

Introduction

On June 24, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent S.P. attended on behalf of the property management company authorized to act on behalf of the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent was assisted by another staff member M.G. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I

also confirmed from the teleconference system that the landlord's agent, assistant and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of the Landlord's Application for Dispute Resolution

As the tenant did not attend the hearing, I asked the landlord's agent to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was served on July 4, 2019 with the Notice of Dispute Resolution Proceeding package for this hearing, which included the landlord's application for an Order of Possession and Monetary Order for unpaid rent, by posting the package on the tenant's door.

Section 89 of the *Act* sets out "special rules" for the service of certain documents. Section 89(1) of the *Act* requires that an application for dispute resolution be served to the other party in person, by registered mail, or as ordered by the Residential Tenancy Branch director.

Section 89(2) of the *Act* allows for an exception to the above-noted rules when a landlord is serving a tenant with an application for dispute resolution for an Order of Possession. In such cases, the landlord may serve the application to the tenant by attaching it to the tenant's door or other conspicuous place at the address where the tenant resides.

As the landlord's agent served their application by attaching it to the tenant's door, I find that the landlord's agent has not served the tenant with the application for dispute resolution in relation to the request for a Monetary Order in accordance with section 89(1) of the *Act*. As such, the landlord's application for a Monetary Order is dismissed with leave to reapply due to an issue with service of documents.

Given that section 89(2) of the *Act* allows for an application for an Order of Possession to be served by attaching to the tenant's door, I must determine if the landlord has established this service and if so, when the application was deemed served on the tenant as the date of service is in dispute.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the third day after it is attached to a door or other conspicuous place.

The landlord submitted into evidence a signed proof of service witness statement in support of her testimony that the notice of this hearing was posted to the tenant's door on July 4, 2019.

Therefore, based on the testimony and the evidence before me, I find that the tenant was deemed served with the landlord's Notice of Dispute Resolution Proceeding package on July 7, 2019, the third day after it was attached to the tenant's door, in accordance with sections 89(2) and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence by the landlord. The landlord's agent confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began July 30, 2018, with a scheduled end date of July 31, 2019.
- Current monthly rent of \$1,250.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$625.00 and a pet damage deposit of \$150.00, which continues to be held by the landlord.

The landlord's agent testified that the tenant failed to pay any rent for June 2019 and as of the date of the hearing, the tenant had also failed to pay rent for July 2019. The landlord's agent testified that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) on June 4, 2019, by posting the notice on the tenant's door. The landlord's agent submitted a signed proof of service witness statement as evidence in support of this testimony. A copy of the 10 Day Notice was submitted into evidence by the landlord.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

No evidence was presented at the hearing that the tenant had a right under the *Act* to deduct all or a portion of the rent.

I accept the testimony of the landlord's agent that the tenant had failed to pay any rent for the months of June and July 2019.

Section 46 of the *Act* contains provisions by which 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 dated the tenant receives the notice.

In considering this matter, I have reviewed the landlord's 10 Day Notice dated June 4, 2019 to ensure that the landlord has complied with the requirements of section 52 of the *Act*.

I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

I accept the evidence before me that the 10 Day Notice was served on the tenant by posting on her rental unit door on June 4, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 7, 2019, three days after posting.

I accept the evidence before me that the tenant failed to pay the full rent due or dispute the 10 Day notice within the five-day time limit allowed under section 46(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the stated effective date of the 10 Day Notice, June 17, 2019.

In light of the above, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective vacancy date of the 10 Day Notice has now passed, the Order of Possession is effective two days after service on the tenant.

As the landlord was successful in obtaining an Order of Possession through this application, I find that the landlord is entitled to recover the \$100.00 cost of the filing fee

from the tenant. As the landlord still holds the tenant's security deposit, I order that the landlord retain \$100.00 from the tenant's security deposit in full and final satisfaction of the recovery of the filing fee for this application.

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 anyone 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.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible.

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: July 29, 2019

Residential Tenancy Branch