



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR – DR OPUM – DR

Introduction

This application has been made via the Direct Request Proceeding; an ex parte process pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*.)

The landlord has applied requesting an order of possession and monetary order based on unpaid rent.

The landlord submitted a proof of service document which declares that on September 26, 2019 at 7:30 p.m. the landlord served the tenant notice of the direct request proceeding by posting to the door of the rental unit by landlord D.R., witnessed by J.B. A photograph of documents placed in the door jamb is supplied as evidence. I note that the proof of service document indicates personal delivery was attempted.

Based on the written submissions of the landlord I find that the tenant has been served the proceeding documents in accordance with section 89(2)(d) of the Act.

In accordance with section 90(c) of the Act I find that the tenant is deemed served with notice of the direct request proceeding effective the third day after mailing.

I note that the method of service utilized by the landlord is insufficient when requesting compensation. This limitation is indicated on the proof of service document completed by the landlord. Therefore, I find that the request for compensation is dismissed with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on unpaid rent?

Background and Evidence

The landlord submitted the following documents:

- A copy of a residential tenancy agreement which was signed by the tenant on July 05, 2019, indicating a monthly rent of \$1,500.00, due on the first day of each month;
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on September 02, 2019 with an effective date of September 11, 2019. The Notice

indicated that the Notice would be automatically cancelled if the landlord received \$750.00 within five (5) days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an application for dispute resolution within five (5) days;

- A copy of a proof of service form signed by witness D.L. and landlord D. R., declaring that the Notice was personally served to the tenant by D.R. on September 02, 2019 at the rental unit address. The time of service is not provided. I note that the Notice indicates the Notice was personally served to the tenant; and
- A direct request worksheet indicating the tenant failed to pay \$100.00 of August 2019 rent owed and \$600.00 in unpaid September 2019 rent owed, for a total sum owed of \$750.00.

Analysis

Based on the evidence before me I find that the tenant owes rent in the sum of \$1,500.00 per month, to be paid on the first day of each month.

Based on the written submission of the landlord I find, pursuant to section 88(a) that the Notice was served to the tenant by leaving a copy with the tenant on September 02, 2019. Therefore, I find that the tenant received the Notice on September 02, 2019.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy for unpaid rent and utilities is effective 10 days after the date that the tenant receives the Notice. As the tenant received to have received this Notice on September 02, 2019, I find that the earliest effective date of the Notice is September 12, 2019.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to end tenancy was September 12, 2019.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on the effective date of the Notice; September 12, 2019.

Section 46(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an application for dispute resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights.

Section 46(5) of the Act provides:

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Therefore, pursuant to section 46(5) of the Act, as there is no evidence the rent was paid in full or that the tenant disputed the Notice, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; September 12, 2019.

Pursuant to section 55(4)(a) of the Act I find that the landlord is entitled to an order of possession. The order is effective **two days after service** to 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.

Pursuant to section 72(1) of the Act I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

The landlord is issued a monetary order \$100.00 which must be served to the tenant. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to an order of possession based on unpaid rent.

The landlord is entitled to filing fee costs.

The claim for unpaid rent is dismissed with leave to reapply.

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: October 16, 2019

Residential Tenancy Branch