



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Farwest Investments Ltd.
and [tenant name suppressed to protect privacy]

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 25, 2019 at 7:15 p.m. the landlord personally served the tenant notice of the direct request proceeding. The proof of service document is signed by the tenant acknowledging service.

Based on the written submissions of the landlord I find that the tenant has been served the proceeding documents in accordance with section 89(1)(a) and 89(2)a) of the *Act*.

I find that the tenant received the proceeding documents on the day of personal delivery; September 25, 2019.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order 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 landlord and the tenant on September 01, 2016, indicating a monthly rent of \$950.00, due on

or before the first day of each month, due on the first calendar day of each month;

- A copy of a Notice of Rent Increase in the approved form indicating rent was increased effective December 01, 2017 to monthly rent of \$985.00 and an Notice of Rent Increase in the approved form indicating rent was increased effective December 01, 2018 to \$1,020.00;
- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on September 06, 2019 with an effective date of September 20, 2019. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,020.00 within five 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 the landlord T. H. and witness K.B., declaring the Notice was served to the tenant by posting to the tenant's door on September 06, 2019 at 11:30; and;
- A direct request worksheet indicating that rent in the sum of \$1,020.00 due September 1, 2019 was not paid.

Analysis

Based on the evidence before me contained in the tenancy agreement and notices of rent increase I find that the tenant owes rent in the sum of \$1,020.00 per month, to be paid on or before the first calendar day of each month.

Based on the written submission of the landlord I find, pursuant to section 88(g) that the Notice was served to the tenant by posting to the tenant's door on September 06, 2019.

Section 90(c) of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant is deemed to have received the Notice to end tenancy on September 09, 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 is deemed to have received this Notice on September 06, 2019, I find that the earliest effective date of the Notice is September 16, 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 20, 2019, the effective date provided on the Notice.

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 by September 14, 2019 or, pursuant to the *Residential Tenancy Branch Rules of Procedure*, the corrected date of September 16, 2019.

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 20, 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.

As there is no evidence before me that the tenant paid the rent, pursuant to section 55(4)(b) of the Act I find that the landlord is entitled to compensation in the sum of \$1,020.00 for September 2019 rent.

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 in the sum of \$1,120.00 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 a monetary order based on unpaid September 2019 rent.

The landlord is entitled to filing fee costs.

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 08, 2019

Residential Tenancy Branch