



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1194763 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”). The application was initially filed under the Direct Request process and was scheduled for a participatory hearing due to the document requirements of the direct request process.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that the documents were received late. The Landlord stated that the hearing documents, along with a copy of their evidence was served to the Tenant in person on October 8, 2019 and again on October 24, 2019.

The Tenant was unsure whether the Landlord’s evidence was received as they did not look through the documents before they were damaged. The Tenant stated that they did not receive the package on October 8, 2019 but the testimony was unclear as to whether they had received the package but lost it which led them to request a second package from the Landlord.

The Landlord submitted a copy of text message communication with the Tenant dated October 24, 2019 in which they advise the Tenant that the documents had been delivered but stated that they can deliver them again if needed. In the text messages the Tenant confirmed they would like the documents. As such, based on the testimony of the Landlord and the text messages, I find it likely that the Landlord did deliver the first package and I therefore accept that the Tenant was served with the Notice of Dispute Resolution and a copy of the Landlord’s evidence on October 8, 2019 as stated by the Landlord. The Tenant did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The Landlord testified that the tenancy started October 1, 2018. The Landlord stated that rent in the amount of \$700.00 is due on the first day of each month and that a security deposit of \$350.00 was paid at the start of the tenancy. The Landlord submitted a copy of the tenancy agreement which confirms the details as stated by the Landlord.

The Tenant agreed that the tenancy agreement started October 1, 2018 but stated that the tenancy may have started before that. The Tenant agreed that rent in the amount of \$700.00 is due on the first day of each month and stated that the security deposit was waived due to the condition of the rental unit when they moved in.

The Landlord testified that they served the Tenant with a 10 Day Notice on August 6, 2019 by posting the notice on the Tenant's door. The Landlord submitted a proof of service document which was signed by the agent who served the 10 Day Notice and by a witness who signed their confirmation that the notice was posted on the Tenant's door on August 6, 2019.

A copy of the 10 Day Notice was also included as evidence and indicates that \$700.00 was unpaid as due on August 1, 2019. The Landlord stated that they did not receive any money towards August or September 2019 rent. They also stated that they received two payments totally \$725.00 in October 2019 and no money towards rent for November 2019.

The Tenant first stated that they were unsure what day they received the 10 Day Notice and then stated that they did not receive a 10 Day Notice. They testified that their

neighbour was served with some documents for the Tenant, but the Tenant was not sure what documents these were. The Tenant stated that they agreed regarding the outstanding rent as testified to by the Landlord. They stated that they have been discussing payment of the rent with the Landlord and that personal circumstances have made it difficult to pay other than the payment of \$725.00 in October 2019.

The Landlord stated that she is not aware of any documents served to the Tenant's neighbour that were intended for the Tenant.

Analysis

As stated in Section 46(4) of the *Act*, after receiving a 10 Day Notice a tenant has 5 days to pay the outstanding rent or file an application to dispute the 10 Day Notice.

While the Tenant stated that they did not receive the 10 Day Notice, I accept the testimony and evidence from the Landlord and find that the 10 Day Notice was posted on the Tenant's door on August 6, 2019. I found the Tenant's testimony to be somewhat conflicting and found it to be unclear as to whether the 10 Day Notice had been received. Therefore, due to the confusing testimony of the Tenant and due to the proof of service document that supports the Landlord's testimony, I find that the Tenant was deemed to have received the 10 Day Notice 3 days after it was posted on their door and are therefore deemed to have received the notice on August 9, 2019.

The parties were in agreement as to the amount of rent owing and that no amount of rent had been paid towards the outstanding rent until October 2019. I also find no evidence before me that the Tenant applied to dispute the 10 Day Notice. Therefore, I find that Section 46(5) of the *Act* applies as follows:

(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.

As the Tenant is conclusively presumed to have accepted that the tenancy ends, I find that the Landlord is entitled to an Order of Possession. Upon review of the 10 Day

Notice, I find that the form and content comply with Section 52 of the *Act*. Therefore, pursuant to Section 55 of the *Act* I award the Landlord a two-day Order of Possession.

Conclusion

Pursuant to Section 55 of the *Act* I grant an Order of Possession to the Landlord effective **two days after service of this Order** on 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.

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: November 07, 2019

Residential Tenancy Branch