



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

On November 5, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

On the second page of the Proof of Service Notice to End Tenancy, there is no signature of a witness to confirm service of the 10 Day Notice to the tenant. I find that Person S.P. has signed as the witness and as the person who served the 10 Day Notice.

As I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request proceeding, I find that a hearing is necessary to address this issue.

I have been delegated authority under the *Act* to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72

The tenant did not attend the hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 10:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that

the landlord, her witness and I were the only ones who had called into this teleconference.

The landlord's agent BP attended the hearing ("landlord") and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified the Notice of Dispute Resolution Proceedings package was sent to the tenant by registered mail on November 7, 2019. The tracking number for the mailing is recorded on the cover page of this decision. I find the Notice of Dispute Resolution Proceedings package served five days later, on November 12, 2019 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on June 1, 2014, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on June 1, 2014;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 12, 2019, for \$2,000.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 21, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door on October 12, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

The landlord testified that since being served with the 10 Day Notice, the tenant has vacated the rental unit, however the tenant has left belongings behind. The landlord also testified that the tenant has not paid rent for the months of August, September and October and believes the tenant abandoned the rental unit some time near the end of October. The landlord testified the tenant has not served her with a Notice of Dispute Resolution Proceedings to dispute the 10 Day Notice.

The landlord's witness, SP was called to provide evidence regarding service of the 10 Day Notice. SP testified that he posted the 10 Day Notice to the tenant's door on October 12, 2019 and that the posting to the door was also witnessed by his mother who was not called to testify.

Analysis

I am satisfied the deficiencies identified by the adjudicator in the interim decision have been addressed. The 10 Day Notice is deemed served on October 15, 2019, three days after posting to the tenant's door in accordance with sections 88 and 90 of the *Act*.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - a. pay the overdue rent, in which case the notice has no effect, or
 - b. dispute the notice by making an application for dispute resolution.
- (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.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenant is conclusively presumed to have accepted the tenancy ended on October 25, 2019, the corrected effective date of the Notice, and must move out of the unit. As this has already occurred, I find the tenant has vacated the rental unit pursuant to section 44(1)(d) of the *Act* and that the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant. Pursuant to section 71, I authorize the landlord to serve the tenant with the Order of Possession by posting to the door of the rental unit.

The landlord should follow the abandonment provisions set out in sections 24-30 of the *Residential Tenancy Regulations* to deal with the abandoned property of the tenant.

The landlord has provided undisputed evidence the tenant is in arrears of rent totalling \$3,000.00. Section 26 of the *Act* is clear, A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. The tenant had no such right and I award the landlord monetary compensation for unpaid rent in the amount of \$3,000.00.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for this application.

Conclusion

As I have found the tenant has already vacated the rental unit pursuant to section 44(1)(d), I find the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant. The landlord may file the order with the Supreme Court of British Columbia and have it enforced as an order of that Court.

The landlord is authorized to serve the tenant with the Order of Possession by posting it to the door of the rental unit pursuant to section 71 of the *Act*.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,100.00**. The landlord may file the order in the Provincial Court (Small Claims) and have it 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: December 20, 2019

Residential Tenancy Branch