



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated November 18, 2019, which should be read in conjunction with this decision.

At the participatory hearing, the landlord attended the teleconference hearing. The tenant did not attend the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on November 19, 2019.

The landlord submitted a copy of the Canada Post receipt showing the tracking number of the registered mail. That tracking number is located on the style of cause page of this Decision.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary Issue

The landlord said at the hearing that they only now wanted an order of possession of the rental unit and not a monetary order, as the tenant will never likely pay any further money. As the landlord has withdrawn that request, I proceeded only on the landlord's application for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that the original tenancy started in February 2017, with a tenant, DD. Later on, the respondent/tenant here, NC, moved in and both tenants agreed to a monthly rent of \$1,400.00. The tenants, however, refused to sign the tenancy agreement. The tenancy agreement was submitted into evidence.

The landlord submitted that the tenants were good tenants for 17-18 months, and then things just fell apart.

The landlord submitted that former tenant, DD, vacated the rental unit sometime earlier in 2019.

The landlord gave evidence that on November 2, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$4,170.00 as of November 1, 2019. The effective vacancy date listed on the Notice was November 2, 2019; however, the landlord submitted that the date should be corrected to November 13, 2019.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant did not pay any further rent and vacated the rental unit on November 22, 2019.

The landlord submitted that although the tenant has now vacated the rental unit, she still needs an order of possession of the rental unit as the tenant left her 15-year-old daughter behind. The tenant's daughter remains in the rental unit and the Child Protective services has said they will come to see about the minor, but they have not.

As there are still occupants in the rental unit, including potentially the 5 month old son of the tenant's daughter, an order of possession is necessary.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenant is conclusively presumed under section 46(5) of the Act to have

accepted that the tenancy ended on the effective date of the Notice, in this case, November 13, 2019.

As a result, I find that the landlord is entitled to and I grant an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant. As the tenant has now vacated the rental unit, service of the order of possession may be accomplished by attaching it to the rental unit door, as I have no information that the tenant does not return to the rental unit and there are occupants remaining.

Should the tenant and/or occupants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

Monetary claim-

As noted, the landlord has withdrawn their monetary claim. I therefore dismiss their monetary claim, with leave to reapply.

I grant the landlord recovery of their filing fee of \$100.00, and allow the landlord to retain the amount of \$100.00 from the tenants' security deposit.

Conclusion

The landlord's application for an order of possession of the rental unit has been granted.

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: January 13, 2020

Residential Tenancy Branch