



Dispute Resolution Services

Page: 1

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 ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession, further to the Landlord having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated October 21, 2019 ("10 Day Notice"). The Landlord also seeks a Monetary Order for the \$4,600.00 in unpaid rent he said the Tenant owes the Landlord, as well as recovery of the \$100.00 Application filing fee.

The Landlord and an agent, M.Y. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony, but no one attended for the Tenant. The teleconference hearing was open for over 50 minutes, and no one called in on the Tenant's behalf.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with these dispute resolution documents by Canada Post registered mail, sent on October 21, 2019. The Landlord provided a Canada Post tracking number, as evidence of the service. I checked the Canada Post website to track this package and it indicated that it was unclaimed by the Tenant.

Residential Tenancy Branch ("RTB") Policy Guideline #12, "Service Provisions" states: "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Tenant was served with the dispute resolution documents by the Landlord on October 26, 2019. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act.

I explained the hearing process to the Landlord and the Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord and Agent were given the opportunity to provide their evidence orally and to ask

questions. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses at the outset of the hearing and confirmed his understanding that the Decision would be emailed to both Parties, with any Orders emailed to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord submitted a tenancy agreement and confirmed in the hearing that the periodic tenancy began on October 1, 2019, with a monthly rent of \$1,200.00, due on the first day of each month. The Landlord said that the Tenant paid him a security deposit of \$600.00 and a \$200.00 deposit toward the October 2019 rent, but no pet damage deposit.

The Landlord said he issued the 10 Day Notice, because the Tenant owed him \$1,000.00 in unpaid rent at that time. He said the Tenant currently owes \$4,600.00, which he said included insufficient amounts of rent having been paid from October 2019 through to January 2020. The Landlord submitted a list of the amount of rent the Tenant owes since October 2019, as follows:

Month	Amount Owing
October 2019	\$1,000.00
November 2019	\$1,200.00
December 2019	\$1,200.00
January 2020	\$1,200.00
Total amount due	\$4,600.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

. . .

(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.

[emphasis added]

I find that the Tenant paid nothing toward the rent she owed after she received the 10 Day Notice, and she did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46 (5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on October 24, 2019, three days after it was posted on the rental unit door.

Section 26 of the Act states that a tenant must pay rent when it is due under the

tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before me that the Tenant had a right to deduct any portion of the rent owing to the Landlord. In the hearing, the Landlord said the Tenant owe him \$4,600.00 in unpaid rent as of January 1, 2020.

I find that the 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of October 31, 2019. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant. As noted above, the 10 Day Notice was deemed served on the Tenant on October 24, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to November 3, 2019. I also find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$4,600.00 in rent owed for the four months prior to the hearing. Therefore, the Landlord's Application for an Order of Possession is granted, pursuant to section 55 of the Act.

As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenant has never paid full rent, since the tenancy began on October 1, 2019, the Order of Possession will be effective two days after service of the Order on the Tenant.

Further, I find that the Landlord has established a monetary claim of \$4,600.00. I authorize the Landlord to retain the Tenant's full security deposit of \$600.00 in partial satisfaction of the claim.

Given that the Landlord is successful in the hearing, I also award the Landlord with recovery of the \$100.00 Application filing fee. The Landlord is granted a Monetary Order under section 67 for the balance due by the Tenant to the Landlord in the amount of \$4,100.00.

Conclusion

The Tenant has not paid rent in full for than the last four months, so the Landlord's Application for an Order of Possession is granted. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant.

The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Further, the Landlord is granted a monetary award of the \$4,600.00 of rent owing by the Tenant, as well as recovery of the \$100.00 Application filing fee. The Landlord is authorized to retain the Tenant's \$600.00 security deposit in partial satisfaction of this claim. The Landlord is awarded a Monetary Order of **\$4,100.00** from the Tenant for the remaining portion of the monetary award.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 14, 2020

Residential Tenancy Branch