



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 7, 2019 (the "Application"). This Decision documents the re-hearing of the matter pursuant to the decision of an arbitrator in a Review Consideration Decision issued on December 3, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was assisted in translation by B.M. Both the Landlord and B.M. provided a solemn affirmation. The Tenants did not attend the hearing.

The Notice of a Dispute Resolution Proceeding package was sent to the parties directly. However, the Landlord confirmed the Tenants were served with the documentary evidence upon which he intended to rely in three (3) packages by posting copies to the door of the Tenants' rental unit. The Landlord testified the final evidence package was served on the Tenants in this manner on January 12, 2020. Pursuant to sections 88 and 90 of the *Act* documents served by posting a copy to the door of the rental unit are deemed to be received three (3) days later. I find the documentary evidence to be relied upon was served on and deemed to be received by the Tenants no later than January 15, 2020. The Tenants did not submit documentary evidence in response to the Application.

The Landlord was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the 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

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord confirmed the tenancy agreement submitted into evidence accurately reflects the terms of the tenancy. It confirms the tenancy began on December 19, 2018. Rent in the amount of \$2,100.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00, which the Landlord holds.

The Landlord testified the Tenants did not pay rent in full when due on September 1, 2019. The Landlord testified that payments of \$900.00 and \$700.00 were received on September 3 and 9, 2019, respectively. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 12, 2019 (the "10 Day Notice"). The Landlord testified the 10 Day Notice was served on the Tenants by posting a copy to the door of the Tenants' rental unit on September 12, 2019. A signed Proof of Service document submitted into evidence confirms service in this manner was witnessed by J.W.

The 10 Day Notice indicates that \$2,000.000 remained outstanding on September 12, 2019. However, during the hearing the Landlord acknowledged that this was an error and that the payments referenced above were received. The Landlord testified that no further rent payments were received from the Tenants in September 2019 following service of the 10 Day Notice and that the Tenants continue to occupy the rental unit.

The Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

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.

[Reproduced as written.]

The Landlord sought an order of possession. In this case, the Landlord testified, and I find that the 10 Day Notice was served on Tenants by posting a copy to the door of the Tenants' rental unit on November 12, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three (3) days later. I find the Tenants are deemed to have received the 10 Day Notice on September 15, 2019. Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until September 20, 2019 to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. The Landlord's affirmed testimony confirmed rent was not paid in full within five (5) days after receipt of the 10 Day Notice. Further, I was not referred to any evidence to suggest the Tenants disputed the 10 Day Notice in accordance with section 46(4) of the *Act*. Therefore, pursuant to section 46(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which I order may be retained from the security deposit held.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in 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: January 27, 2020

Residential Tenancy Branch