



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This participatory hearing was convened after the issuance of a December 17, 2019 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing as the adjudicator who initially considered the application was not satisfied with the service of the 10 Day Notice.

The landlord filed an Application for Dispute Resolution (the "Application") on December 16, 2019 seeking an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on February 21, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

A proxy for the landlord attended the hearing, and I am satisfied that the relationship between the proxy and the landlord is of such a nature that the proxy was informed and capable of speaking to the issue on the landlord's behalf. The tenants did not attend the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act* ?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. The landlord applied for an order of possession pursuant to the 10 Day Notice given to the tenants on December 2, 2019, and a monetary order for the amount of \$1,600.00 that represents unpaid rent for the month of December 2019.

The landlord submitted the following evidentiary material:

- A copy of the residential tenancy agreement that was signed by the landlord and the tenants on September 15, 2019. The monthly rent was \$1,600.00, payable on the first day of each month. The tenancy commenced on September 15, 2019.
- A copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), dated December 2, 2019, for \$1,600.00 in unpaid rent. This 10 Day Notice states that the tenants 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 vacancy date indicated on the 10 Day Notice, December 12, 2019.
- A copy of the Proof of Service of the 10 Day Notice – an agent of the landlord affixed this document to the tenants’ door on December 2, 2019 at 10:00 a.m.
- A copy of the Direct Request worksheet that shows the rent amount owing.
- A written submission from the landlord dated December 11, 2019 explaining the non-payment of rent for the month of December 2019, with attached copies of emails between the landlord and tenant.

In the interim, the landlord asked for a change to the dispute hearing date and time, due to their absence from the country on travel. Notes in the administrative file state the landlord was informed on how to formally request a change of hearing date. On the hearing conference call, a relation of the landlord attended as proxy, and I consider the oral testimony of this agent as representing that of the landlord.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on December 5, 2019, three days after its posting.

I accept the evidence before me that the tenant has failed to pay the rent owed in full by December 10, 2019, within the five days granted under 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

I find that the tenant was obligated to pay \$1,600.00, as per the tenancy agreement.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 12, 2019.

I make this finding for the following reasons:

- Documentary evidence on the file shows an email from the landlord to the tenant on December 2, 2019. This message includes: “[the partner of the landlord] dropped over to your place and left a notice on your front door. Can you contact me and let us know what your plans are.”
- On December 6, 2019, the tenant emailed to the landlord: “Because you left notice in [sic] my door it adds 3 days to [the] notice.” I find this message constitutes acknowledgement by the tenant that the landlord served a Notice to End Tenancy on the date indicated in the record, December 2, 2019.
- On December 1, 2019, the tenant emailed to the landlord to inform them that she did not have the rent payment. There is evidence of a previous interaction where the tenant failed to pay rent on October 1, 2019. This resulted in the landlord serving a 10 Day Notice on October 2, 2019. From this I find as fact that the tenant knew of the urgency of the need to pay rent for that calendar month, and the following months thereafter, on the 1st as per the tenancy agreement.

I also find the evidence shows the landlord’s partner served the 10 Day Notice by affixing it on the tenant’s door on December 12, 2019. This is for the following reasons:

- The landlord’s partner provided his full name and address, along with a signature on page 2 of the Proof of Service of the 10 Day Notice.
- This same document contains the notation on page 1: “[landlord] sent [tenant] an email to tell her that a notice had been left on her door that morning.”
- The landlord’s proxy in the hearing provided the oral testimony that the person who served the 10 Day Notice is the landlord’s partner.

I find the landlord is entitled to an Order of Possession as well as the unpaid rent amount of \$1,600.00. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,700.00, for rent owed for December 2019 and recovery of the filing fee for this hearing application. 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, this Order may be filed in the Small Claims Division of the Provincial Court and 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 *Act*.

Dated: February 26, 2020

Residential Tenancy Branch