



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty Property
Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on January 21, 2020 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent.

The Landlord's Agent D.L. and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the Tenant acknowledged receipt of the Landlord's application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on April 15, 2004. The Tenant stated that he is currently paying rent in the amount of \$508.00 to the Landlord which is due on the first day of each month. D.L. stated that the Tenant is currently required to pay rent in the amount of \$575.00 to the Landlord each month. The Tenant paid a

security deposit at the start of the tenancy, however, neither party was certain as to the amount. The Tenant continues to occupy the rental unit.

D.L. testified the Tenant has been served several rent increases throughout his tenancy in accordance with the *Act*. D.L. stated that the Tenant pays rent in the amount of \$508.00 to the Landlord on time each month, however, since January 2017, the Tenant has not complied with the Notice of Rent Increase that were served to him by the Landlord each year. As such, the Tenant has failed to pay the increased amount of rent incrementally each month since January 1, 2017. D.L. stated that currently, the Tenant has an outstanding balance of rent owing to the Landlord in the amount of \$1,515.00.

D.L. stated that he has tried to work with the Tenant to gain compliance with the Notice of Rent Increase, however, the Tenant throws them in the garbage after they are served to him. D.L. stated that he subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 8, 2020 (the "10 Day Notice") with an effective vacancy date of January 18, 2020. At that time, rent in the amount of \$1,381.00 was outstanding. D.L. testified he served the 10 Day Notice to the Tenant by registered mail on January 8, 2020.

In response, the Tenant stated that he received the 10 Day Notice and acknowledges that he has received the Notice of Rent Increase that were served to him by the Landlord. The Tenant testified that he is unable to pay the increased amount of rent as he does not collect any income aside from returning recycling. As such, the Tenant stated that he has only paid the Landlord in the amount of \$508.00 each month despite that fact that the rent has increased to \$575.00 each month.

Analysis

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

Section 26 of the *Act* states that a Tenant must pay the 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 this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states 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.

The Landlord served the Tenant with the 10 Day Notice dated January 8, 2020 with an effective vacancy date of January 18, 2020, by registered mail on January 8, 2020. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenant is deemed to have received the 10 Day Notice on January 13, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until January 18, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept that the parties agreed that after service of the 10 Day Notice, the Tenant has made no payments towards the amount of unpaid rent. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, January 23, 2020, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant has breached the *Act* by not paying the full amount of rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it 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: March 24, 2020

Residential Tenancy Branch