



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear the landlord's application for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and
- authorization to recover the filing fee for this application pursuant to section 72.

Although I left the connection open until 2:15 P.M. to enable the tenant to call into this teleconference scheduled for 1:30 P.M., the tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of the Notice of Hearing and Evidence

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) by posting it to the door of the tenant on February 07, 2020.

The landlord's application is for an order of possession and a monetary order.

Pursuant to section 89 (2)(d) of the *Act*, a Notice of Hearing may be posted to the door of the tenant if the application is only for an order of possession. I find the tenant was

properly served in accordance with section 89(2)d of the Act regarding the application for an order of possession.

As the tenant was not served in accordance with section 89(1) of the Act regarding the application for a monetary order for unpaid rent, I dismiss this application with leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- an Order of Possession for non-payment of rent?
- authorization to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The landlord testified the tenant was previously living in the rental unit as an occupant. The previous tenant left the rental unit on October 24, 2019 and the tenant signed a tenancy agreement on November 15, 2019. Monthly rent is \$1,090.00, due on the first of the month. The landlord holds a \$545.00 security deposit collected at the outset of the tenancy. The tenant continues to reside at the rental unit and is in arrears. A copy of the signed written tenancy agreement was provided.

The landlord confirmed the correct tenancy address (the complete address is mentioned on the cover page of this decision).

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated January 24, 2020, for \$790.00 in unpaid rent due on January 01, 2020. The effective date is February 04, 2020. A Direct Request Worksheet (RTB form 46) was provided. The Notice was served in person on January 24, 2020. A signed witnessed Proof of Service form (RTB-34) was submitted into evidence. The tenant also signed the Proof of Service form.

Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I find the tenant was served with the Notice on January 24, 2020 in accordance with section 88(a) of the Act. The form and content of the Notice is valid pursuant to section 52 of the Act. The tenant has not disputed the Notice and is conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, February 04, 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain \$100.00 of the security deposit to recover the filing fee.

I warn the tenant that she may be liable for any costs the landlord incur to enforce the order of possession.

Conclusion

I dismiss with leave to reapply the request for a monetary order for unpaid rent.

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.

I order the landlord to retain \$100.00 of the security deposit and address the remaining security deposit balance in accordance with section 38 of the Act.

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 18, 2020

Residential Tenancy Branch