



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPRM-DR, FFL

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was reconvened as a participatory hearing, as the Adjudicator at the Direct Request Proceeding was unable to determine when rent was due.

The reconvened hearing was held to consider the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on January 08, 2020 the Dispute Resolution Package and associated evidence were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*; however, the Tenant did not appear at the hearing.

The female Landlord stated that on January 15, 2020 the notice of this reconvened hearing was sent to the Tenant, via registered mail, at the service address noted on the Application. The male Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that notice of this hearing was served to the Tenant. As notice of the hearing was served to the Tenant, the hearing proceeded in the absence of the Tenant.

The Landlord's affirmed that they would tell the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent; and to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The female Landlord stated that Tenant was living in the rental unit when they purchased the property in April of 2019. The parties entered into a new tenancy agreement on May 01, 2019, in which the Tenant agreed to pay monthly rent of \$1,300.00.

The female Landlord stated that rent is due by the first day of each month.

The female Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities , which had an effective date of December 14, 2019, was posted on the front door of the rental unit on December 04, 2019. The Notice indicated that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice.

The female Landlord stated that the Tenant still owes \$3,900.00 in rent from October, November and December of 2019. The male Landlord stated that the Landlord does not wish to amend the Application for Dispute Resolution to include a claim for unpaid rent for any period after December 31, 2019.

Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord when it is due. On the basis of the undisputed evidence I find that the Tenant

did not pay the rent that was due for October, November, or December of 2019. I therefore find that the Tenant owes rent to the Landlord in this amount.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on December 04, 2019, which declared that the Tenant must vacate the unit by December 14, 2019.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on December 07, 2019.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 07, 2019., I find that the earliest effective date of the Notice is December 17, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was December 07, 2019.

Section 46(4) of the *Act* stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has been granted an Order of Possession that is effective **two days after** it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$4,000.00, which is comprised on \$3,900.00 in unpaid rent and \$100.00 for the filing fee. Based on these determinations I grant the Landlord a monetary Order for the amount of \$4,000.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: March 13, 2020

Residential Tenancy Branch