



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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. The landlord's interpreter/witness and witness N.K. also attended the hearing. 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, the landlord's witnesses and I were the only ones who had called into this teleconference.

The landlord testified that she personally served the tenant with her application for dispute resolution on March 6, 2020. A photograph of the landlord serving the tenant was entered into evidence. Witness N.K. testified that she witnessed the landlord serve the tenant with the landlord's application for dispute resolution. Based on the above, I find that the landlord served the tenant with her application for dispute resolution in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. This tenancy began approximately 10 years ago and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. The tenant did not pay a security deposit and no tenancy agreement was signed.

The landlord's interpreter testified that she personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on January 16, 2020. The 10 Day Notice states the tenant failed to pay rent in the amount of \$1,200.00 due on January 1, 2020 and has an effective date of January 27, 2020. A video showing the tenant being served was entered into evidence to support the above testimony. In the video, the 10 Day Notice can clearly be seen. The 10 Day Notice was entered into evidence.

The landlord testified that the tenant paid \$200.00 towards rent sometime in January 2020 but has not paid any rent since then.

The tenant did not dispute the 10 Day Notice.

Analysis

I find the tenant was served with the 10 Day Notice in accordance with section 88 of the *Act*. Upon review of the 10 Day Notice, I find that it complies with the form and content requirements of section 52 of the *Act*.

The landlord testified that the tenant did not pay all outstanding rent within five days of receiving the 10 Day Notice.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 46(5) of the *Act* states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed evidence of the landlord, I find that the tenant has not paid all outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by January 27, 2020. As the tenant has not vacated the subject rental property, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 issue a Monetary Order to the landlords in the amount of \$100.00.

The landlords are 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 *Residential Tenancy Act*.

Dated: April 30, 2020

Residential Tenancy Branch