



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on February 19, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified the Notice of a Dispute Resolution Proceeding package was served on the Tenant by registered mail on March 11, 2020. A Canada Post registered mail receipt was submitted in support. The Tenant denied receipt and testified that he has been working in Ontario for several months. However, pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. Despite the Tenant's work arrangements, I find these documents are deemed to have been received by the Tenant on March 16, 2020. The Tenant did not submit documentary evidence in response to the Application.

The parties were given the 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.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord advised that she purchased the rental property and took possession on December 22, 2019. The Landlord did not know when the tenancy began but the Tenant advised he has lived in the rental unit for about 14 years. The parties agreed that rent in the amount of \$300.00 per month is due on the first day of each month. The Tenant did not pay a security deposit or a pet damage deposit.

The Landlord testified the Tenant did not pay rent in full on February 1, 2020. Accordingly, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 7, 2020 (the "10 Day Notice"). At that time, rent in the amount of \$300.00 was outstanding. The Landlord testified the 10 Day Notice was served on the Tenant by attaching a copy to the door of the Tenant's rental unit on February 7, 2020. A signed Proof of Service document confirms service in this manner was witnessed by J.A. The Tenant denied receipt because he has been working in Ontario for several months.

The Landlord testified the Tenant paid outstanding rent on February 17, 2020 but that rent due on May 1, 2020 has not been received. The Tenant did not dispute the Landlord's evidence with respect to the payment of rent but cited difficulties due to his remote work location and Covid-19.

The Landlord also seeks to recover the \$100.00 filing fee paid to make the Application.

Analysis

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

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

[Reproduced as written.]

Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent is unpaid on any day after the day it is due by giving notice to the tenant. In this case, the Landlord testified, and I find, that the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on February 7, 2020. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. Despite the Tenant's work arrangements, I find the 10 Day Notice is deemed to have been received by the Tenant on February 10, 2020.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until February 15, 2020 to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. However, there was no evidence the Tenant disputed the 10 Day Notice or paid rent within five days after receipt of the 10 Day Notice. Indeed, the evidence of the parties confirmed that rent was not received by the Landlord until February 17, 2020. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

Further, I find the Tenant did not pay rent when due as alleged by the Landlord and that rent due on May 1, 2020 remains outstanding. Therefore, I find it is appropriate in the circumstances to grant the Landlord a monetary order for unpaid rent in the amount of \$300.00. Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$400.00 which is comprised of \$300.00 for unpaid rent and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$400.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 5, 2020

Residential Tenancy Branch