



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This matter initially proceeded by way of a Direct Request proceeding on March 30, 2020 and dealt with an Application for Dispute Resolution filed by the Landlord for an Order of Possession based on unpaid rent.

On March 31, 2020, the Landlord filed an application for review consideration, and the Decision issued from that application, dated April 9, 2020, suspended the decision issued from the Direct Request proceeding until the Review Hearing scheduled for May 28, 2020. The Landlord's application for review consideration had been granted on the grounds that new evidence established that the Direct Request application had been filed by an agent of the Landlord. Pursuant to section 82(2)(c) of the Act, it was ordered that a new hearing be held.

This Review Hearing decision should be read in conjunction with the Original Hearing decision dated March 30, 2020, and the Review Consideration decision dated April 9, 2020.

Two Property Managers (the "Landlord") and one of the Tenants (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary Matter – Landlord's Name

The Property Managers confirmed that they are agents for the owner, and that the legal name of the Landlord is correctly listed on the tenancy agreement as CROSSROADS ENTERPRISES LTD. The Property Managers testified that their application had been filed in their name in error.

All parties were advised, during these proceedings that the applicant name would be update to CROSSROADS ENTERPRISES LTD.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties agreed that this tenancy began on March 1, 2013, that rent in the amount of \$778.00 is to be paid by the first day of each month and that the Tenants had paid a \$350.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Tenants with the Notice to End Tenancy by posting it to the front door of the rental unit on March 2, 2020, listing an outstanding rent amount of \$786.00 and an effective date of March 15, 2020. The Notice informed the Tenants of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants were presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenants have not paid the outstanding as indicated on the Notice. The Landlord testified that they are requesting an Order of Possession to enforce their Notice.

The Tenant testified that they had received the Notice and agreed that they have not paid the rent and that they did not dispute the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) *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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *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.

(5) *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.

I accept the agreed upon testimony of these parties that the Tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice and that they have not moved out of the rental unit, in accordance with the Notice. Therefore, I find that the Tenants have not paid the rent or disputed the Notice, within the legislated timeline and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an order of possession, effective **two days** after service on the Tenants. Should the Tenants fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the *Act* (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the *Act* and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed 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: May 28, 2020

Residential Tenancy Branch