



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Narod Properties Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, OPR, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the Act) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

JN attended as agent for the landlord ("the landlord"). The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 25 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord testified the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on May 29, 2020 to the

address of the unit and deemed received by the tenant five days later under section 90 of the *Act*, on June 3, 2020.

The landlord provided the Canada Post tracking number referenced on the first page of this Decision in support of service and a copy of the receipt.

Pursuant to sections 89 and 90 of the *Act*, the uncontradicted testimony of the landlord and the documentary evidence submitted, I find the landlord served the tenant on June 3, 2020.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

During the hearing, the landlord referenced a previous Decision dated May 5, 2020 reference to the file number appearing on the first page.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The verbal month-to-month tenancy began many years ago; current monthly rent of \$950.00 is payable on the first of the month. The tenant provided a security deposit of \$300.00 which the landlord holds.

The landlord submitted a copy of the Ten-Day Notice which is in the RTB form. The notice is dated November 26, 2019 and contains an effective date of December 6, 2019. The landlord testified he personally served on November 26, 2019 the adult male who identified himself as MJ and who stated he lived in the unit. The Ten-Day Notice stated that \$950.00 rent was due on November 1, 2019 and was unpaid.

The landlord submitted a copy of the One Month Notice which is in the RTB form. The notice is dated November 26, 2019 and contains an effective date of December 31, 2020. The landlord testified he personally served on November 26, 2019 the adult male who identified himself as MJ and who stated he lived in the unit. The notice stated the reason for issuance was that the tenant was repeatedly late paying rent.

The landlord testified the tenant has not applied to dispute either notice.

The landlord stated that from November 2018 to November 2019 the tenant was late paying rent every month. The landlord testified that rent for the month of November 2019 was paid in December 2019; all receipts for payments after the issuance of the notices were accepted and marked "for use and occupancy".

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the Act.

I find the tenant was served with the Ten-Day Notice in accordance with the Act on November 26, 2019.

I find the tenant did not dispute the Ten-Day Notice within the five-day period following service. I find the tenant paid rent on December 6, 2019 which was accepted for "use and occupancy" only.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of December 6, 2019 requiring the tenant to vacate the rental unit by that date.

As the tenant continued to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

As the landlord has been successful in the landlord's application, the landlord is awarded reimbursement of the filing fee of \$100.00 under section 72 which I direct the landlord may deduct from the security deposit.

Because of my finding, I will not consider the application for an order of possession under the One Month Notice.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: June 22, 2020

Residential Tenancy Branch