



Dispute Resolution Services

Page: 1

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 of the *Act*, and
- an authorization to recover the filing fee, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 9:57 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. The tenant did not attend the hearing. The landlord, represented by advocate WZ (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. Witness TP also attended. I also confirmed from the teleconference system that the landlord, her witness and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on June 10, 2020, in accordance with section 89(2)(c) of the *Act* (the tracking number is recorded on the cover of this decision). The package was sent to the basement address.

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on June 15, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Update of Tenancy and Tenant’s Addresses

At the outset of the hearing the landlord corrected the tenancy and tenant’s addresses. Pursuant to section 64(3)(a) of the *Act*, I have amended the landlord’s application. The updated address is the original address, including the word ‘basement’.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession for unpaid rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below. I explained rule 7.4 to the landlord; it is her obligation to present the evidence to substantiate his application.

The landlord affirmed the tenancy started on December 29, 2019. Monthly rent is \$1,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 was collected and the landlord still holds it in trust.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated March 15, 2020, listing \$1,200.00 in unpaid rent due on March 01, 2020. The effective date is March 01, 2020. The Notice was posted on the tenant’s door on March 15, 2020. The landlord affirmed the tenant has not submitted any rent payment after the Notice was served.

The landlord and witness TP affirmed the tenant continues to reside at the rental unit and is in arrears. The landlord affirmed on March 17, 2020 the tenant texted the landlord asking for the landlord to pay him \$1,800.00 to move out. A copy of the text message was submitted into evidence.

The landlord applied for an order of possession, based on the same Notice, on March 20, 2020. Both parties did not attend the hearing and that application was dismissed with leave to reapply on May 28, 2020. The file number listed on the cover page of this application.

Analysis

Section 26 of the *Act* requires that a tenant pay rent when it is due under the tenancy agreement. I accept the landlord uncontested testimony that the tenant must pay monthly rent of \$1,200.00 on the first day of the month and has been in arrears since March 01, 2020.

Section 46(1) of the *Act* states 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. The Notice is dated March 15, 2020 and was posted to the tenant's door on that date. I deem the tenant was served with the Notice on March 18, 2020, three days after it was posted to the tenant's door, in accordance with sections section 88(g) and 90(c) of the *Act*.

I find the Notice is in accordance with section 52 of the *Act*, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

As the tenant is deemed served with the Notice on March 18, 2020, I correct the effective date of the Notice to March 28, 2020, in accordance with section 46(1) and 53(2) of the *Act*.

The tenant has not disputed the Notice and is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, March 28, 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain \$100.00 from the tenant's security deposit to recover the filling fee.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

Pursuant to section 55(2)(b) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this order** 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.

Pursuant to section 72(2)(b) of the *Act*, I authorize the landlord to retain \$100.00 from the tenant's \$600.00 security deposit to recover the filing fee for this application.

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 29, 2020

Residential Tenancy Branch