



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

The landlord filed an Application for Dispute Resolution on September 18, 2020 seeking an order of possession for the rental unit.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on November 13, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord’s agent provided a statutory declaration that addressed specifically the matter of service to the tenant of the Notice of Dispute Resolution. They sent the tenant notice of this dispute resolution hearing by registered mail on September 24, 2020. This was to the address for service where the tenant resided at the time of mailing, the rental unit itself. A copy of the Canada Post tracking number was provided by the landlord to show they used this method of service. By section 90 of the *Act* I find the tenant was deemed served on the 5th day after it was mailed, September 29, 2020.

I accept the landlord served the tenant notice of this hearing in a manner complying with the *Act*. By Rule 7.3 of the *Rules of Procedure* I conduct the hearing in the absence of the tenant. The tenant provided no written submissions of documentary evidence in advance of the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a statutory declaration, declared September 18, 2020. The gave the basic terms of the tenancy agreement therein: the tenancy began on January 1, 2020, for the rent amount of \$620 per month. In their Application, they provided that the tenant paid a security deposit amount of \$75.

The landlord applied for an order of possession pursuant to the 10 Day Notice issued to the tenant on September 2, 2020. This was for the unpaid rent amount due on September 1, 2020. The tenant had not paid previous months rents, and there was an amount of rent owed that remained outstanding. A process server gave this notice to the tenant by posting it to the door of the unit, and the landlord submitted a 'Proof of Service' document to show this was on September 2, at 9:45 a.m.

The landlord provided a copy of the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"). This document specifies on page 1:

You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch. . If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the Notice.

In the hearing, the landlord provided that they had no communication with the tenant and received no documentation of any kind from the tenant. The landlord also stated the tenant still occupied the rental unit at the time of hearing. In the following months, the tenant did not pay rent through October and November.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

Based on the statutory declaration of the landlord, and the proof of an agreement between the parties, I find a tenancy agreement was in place and clearly stated the amount and schedule for payment.

Section 46 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the undisputed submissions by the landlord, I find a process server provided the 10 Day Notice to the tenant on September 2, 2020. By section 90 of the *Act*, I find the tenant was deemed served on the 3rd day thereafter, on September 5. The tenant failed to pay the rent owing by September 10, 2020, within the five days granted under section 46(4) of the *Act*. There is no evidence before me that the tenant disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 14, 2020. In the hearing, the landlord stated that the tenant is still in the rental unit.

Conclusion

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.

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: November 16, 2020

Residential Tenancy Branch