



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an Order of Possession for unpaid rent, pursuant to section 55.

The two tenants did not attend this hearing, which lasted approximately 18 minutes. The landlords’ agent (“landlord”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the two landlords named in this application at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlords’ paper application only, not any participation by the tenants. An “interim decision,” dated October 14, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlords were required to serve the interim decision and notice of reconvened hearing to the tenants. The landlord stated that the tenants were each served with the above documents on October 14, 2020, by way of registered mail to the rental unit where the tenants are residing. The landlords provided two Canada Post receipts and confirmed both tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the interim decision and notice of reconvened hearing on October 19, 2020, five days after their registered mailings.

The landlord claimed that the tenants were each served with the landlords' original application for dispute resolution by direct request on September 24, 2020, by way of registered mail to the rental unit where the tenants are residing. The landlords provided two Canada Post receipts and confirmed both tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' original application on September 29, 2020, five days after their registered mailings.

The landlord stated that the tenants were served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 9, 2020, ("10 Day Notice") by way of registered mail on the same date to the rental unit where the tenants are residing. The landlords provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 10 Day Notice on September 14, 2020, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to remove the tenants' minor son as a tenant-respondent party. The landlords did not provide a full legal name for this person and the landlord stated that he is a minor. The landlord consented to this amendment during the hearing and I find no prejudice to the tenants in making this amendment.

Issue to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on October 1, 2019. Monthly rent in the current amount of \$1,400.00 is payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlord stated that the tenants were issued the 10 Day Notice, which has an effective move-out date of October 1, 2020, indicating that rent in the amount of \$1,400.00 was due on September 1, 2020. The landlords provided a copy of the notice. The landlord explained that the tenants failed to pay rent of \$1,400.00 for each month

from September to December 2020, inclusive. The landlords seek an order of possession based on the 10 Day Notice.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on September 1, 2020, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on October 1, 2020, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by October 1, 2020. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants pursuant to section 55 of the *Act*, as I find that the 10 Day Notice complies with section 52 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord(s) effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises 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: December 21, 2020

Residential Tenancy Branch