



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'akola Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated November 30, 2020, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agents (landlords) attended the teleconference hearing. The tenant did not attend the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on December 4, 2020. The landlord provided the tracking number for the registered mail as proof of service. The tracking number for the registered mail is located on the style of cause page of this decision.

The landlord submitted that they originally served the Notice of a Dispute Resolution Hearing and all Direct Request documents to the tenant by registered mail.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary Matter-

The landlords confirmed they were not seeking a monetary order for unpaid rent or to recover the cost of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on August 1, 2006, with a listed average Market Rent, as the tenancy was subsidized. The landlord submitted that the current average Market Rent is \$584.

The written tenancy agreement showed that CJ and KR were listed as tenants; however, KR was not listed on the landlord's application and a DCJ was listed as the only tenant on the landlord's application.

In response to my inquiry, the landlord submitted that KR had vacated the rental unit a long time ago and that they added "D" to CJ's name as the tenant. The landlord explained that throughout the tenancy, the tenant went back and forth between "D" and "C" as a preferred, given name. The tenant would tell the landlord the name she preferred at that time. Out of an abundance of caution, the landlord used both the tenant's preferred given names.

The landlords submitted that the tenant failed to pay the full monthly rent for September 2020, and that as a result, she was served with a 10 Day Notice to End Tenancy for Unpaid Rent (Notice), by registered mail on September 22, 2020, listing rent deficiency of \$2,470 owed as of September 1, 2020. The effective move-out date listed was

October 7, 2020. Filed into evidence was the Notice and signed proof of service of the Notice.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice. In addition, although the tenant has made one payment of \$600 on November 16, 2020, since the Notice was issued, the current outstanding monthly rent deficiency is \$7,227, which included the amount owed under the repayment plan.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service of service.

I find 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 Notice, in this case, October 7, 2020.

As a result, I find that the landlord is entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession of the rental unit. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit has been granted.

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: January 7, 2021

Residential Tenancy Branch