



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

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

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("The Notice") pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:41 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord 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 October 22, 2020, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

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 October 27, 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 Address

At the outset of the hearing the landlord corrected the tenancy address. Pursuant to section 64(3)(a) of the Act, I have amended the landlord's application. The landlord stated the packaged containing the materials was sent to the updated tenancy address.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence provided by the attending party, including documentary evidence and the landlord's testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate his claims.

The landlord testified the tenancy started on May 07, 2020. Rent is \$1,300.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 was collected and the landlord holds it in trust. A tenancy agreement was submitted into evidence.

The landlord affirmed he attached the Notice to the tenant's rental unit front door on October 09, 2020, at 12:32 P.M. The Notice and a witnessed proof of service form were submitted into evidence. The October 09, 2020 Notice is for failure to pay rent in the amount of \$1,300.00 due on September 01, 2020 and October 01, 2020, in the total amount of \$2,600.00.

The landlord said the tenant has not paid rent since September 01, 2020 and continues to occupy the rental unit. A monetary order worksheet was submitted into evidence.

Analysis

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$1,300.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's undisputed testimony, the Notice and the proof of service form submitted into evidence, I find the Notice was attached to the tenant's front door on October 09, 2020 and, per section 90(c) of the Act, the tenant is deemed served on October 12, 2020. I find the tenant did not leave the rental unit and has not paid rent since September 01, 2020

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 landlord was successful in his 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 security deposit to recover the filing fee. The landlord must address the remaining amount of the security deposit in accordance with section 38 of the Act.

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

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.

Pursuant to sections 38 and 72 of the Act, I authorize the landlord to retain \$100.00 from the security deposit to recover the filing fee.

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 12, 2021

Residential Tenancy Branch