



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

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 October 23, 2020, which should be read in conjunction with this decision.

At the participatory hearing, the landlord 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 October 26 2020. The landlord provided the tracking number and receipt for the registered mail as proof of service.

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 landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

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 landlord testified that the tenant moved into the rental unit on or about May 7, 2020, and that monthly rent is \$1,000, due on the first day of the month. The landlord submitted that the tenancy began as an oral agreement.

The landlord submitted that the tenant failed to pay the monthly rent for September 2020, and that as a result, she was served with a 10 Day Notice, by placing the document in her mailbox on September 2, 2020, listing unpaid monthly rent of \$1,000 owed as of September 1, 2020. The effective move-out date listed was September 12, 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 within five days. The landlord said that he was offered a cheque from the tenant's employer on or about September 20, 2020, but it was not clear the payment was for rent. The landlord said he declined to accept the cheque, but since that time, he has received \$1,000, in October 2020. The landlord said additionally, that the tenant owed and still owes \$700 for July and \$1,000 for August prior to the Notice being issued. The landlord said that the tenant has not paid the monthly rent for October, November, December 2020, and January 2021.

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.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, a document served by leaving it in the mailbox is deemed received three days later. Here, the Notice was left in the mailbox on September 2, 2020, and deemed received by the tenant on September 5, 2020.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is September 15, 2020, 10 days after the deemed received date of September 5, 2020.

I find the tenant 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, in this case, September 15, 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 12, 2021

Residential Tenancy Branch