



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on January 14, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord attended the hearing and provided testimony. The tenant did not attend the hearing. The landlord testified that he personally gave the Tenant a copy of the Notice of Hearing package on October 28, 2020. I find the Tenant received the package this same day it was given, in person, at the rental unit.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The landlord testified that current rent is \$1,090.00, and is due on the first day of each month. The landlord holds a security deposit of \$545.00.

The landlord testified that the tenant moved in on August 1, 2020, and has not paid any rent since moving in. The Landlord stated that the Tenant continues to occupy the unit and not pay any rent to this day. The landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the tenant's door on October 13, 2020. Service of this document was witnessed by a third party and a proof of service document was provided. The 10 Day Notice specified that \$1,090.00 was unpaid at the time. However, the amount was actually more than this, as the Tenant has not paid any rent since moving in.

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent in the amount, of *at least* \$1,090.00, at the time the 10 Day Notice was issued. On October 13, 2020, the 10 Day Notice was posted to the door of the rental unit. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the tenant is deemed to have received the 10 Day Notice on October 16, 2020.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice.

The landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Pursuant to sections 72 of the *Act*, I authorize the landlord to retain \$100.00 from the security deposit in order to compensate him for the cost of filing this application. This leaves a security deposit balance of \$445.00 which must be dealt with in accordance with the *Act*.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 14, 2021

Residential Tenancy Branch