



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The two landlords and their agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that they were the owners of the rental unit. The landlords confirmed that their agent had permission to represent them at this hearing. The landlords' agent confirmed that he is the main contact for the tenant during this tenancy.

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 tenant. An "interim decision," dated November 17, 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 tenant. The landlords' agent stated that he served the tenant with the above documents on November 17, 2020, by way of posting to the rental unit door, where the tenant is still residing. He said that his neighbour witnessed the posting. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on November 20, 2020, three days after its posting.

The landlords' agent claimed that he personally served the tenant with the landlords' original application for dispute resolution by direct request on October 25, 2020. He stated that his neighbour witnessed the service. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlords' original application on October 25, 2020.

The landlords' agent stated that the tenant was served with the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2020, ("10 Day Notice") by way of posting to the tenant's rental unit door on the same date. He said that his brother witnessed the posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on September 5, 2020, three days after its posting.

Issue to be Decided

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

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords' agent testified regarding the following facts. The landlords purchased the rental unit in summer 2019 and continued the tenant's tenancy as of July 1, 2019, as the tenant was already residing in the rental unit. Monthly rent in the amount of \$700.00 is payable on the first day of each month. The tenant's security deposit of \$350.00 was transferred from the former owner to the landlords. The landlords continue to retain the tenant's security deposit. A written tenancy agreement was signed by both parties, with only the name of the two landlords, not the landlords' agent because the property manager left the agent's name out. The tenant continues to reside in the rental unit.

The landlords' agent stated that the tenant was issued the 10 Day Notice, which has an effective move-out date of September 15, 2020, indicating that rent in the amount of \$700.00 was due on September 1, 2020. He claimed that he issued the notice in his name, as he is the agent of the landlords. The landlords provided a copy of the notice. The landlords' agent explained that the tenant failed to pay rent of \$700.00 for each month from September 2020 to February 2021, 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 tenant did not attend. The tenant 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 tenant has 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 tenant to take either of the above actions within five days led to the end of this tenancy on September 15, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 15, 2020. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*, as I find that the 10 Day Notice complies with section 52 of the *Act*.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord(s) effective **two days after service of this Order** on the tenant. Should the tenant 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.

I order the landlords to retain \$100.00 from the tenant's security deposit of \$350.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$250.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: February 02, 2021

Residential Tenancy Branch