



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: OPR-DR

Introduction

The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent under section 55 of the *Residential Tenancy Act* ("Act").

A dispute resolution hearing was held by teleconference on February 4, 2021 at 11:00 AM. The landlord attended the hearing, while the tenant did not.

The landlord, who I affirmed, gave evidence that she served the Notice of Dispute Resolution Proceeding on the tenant by way of Canada Post registered mail on November 20, 2020. The package was ready for pick-up on November 30, 2020 and a final notice was provided. The tenant refused to pick up her mail. A copy of the registered mail tracking information, the receipt, and a copy of the label on which the tenant's address is affixed, were submitted in evidence

Based on the above I find that the landlord served the tenant the Notice of Dispute Resolution Proceeding in compliance with the Act. It should be noted that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred.

Issue

Is the landlord entitled to an order of possession?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on March 1, 2015. Monthly rent is \$518.00. There is no security or pet damage deposit, nor is there a written tenancy agreement; the tenancy agreement is oral. While the rental unit itself is a manufactured home, the tenant has a tenancy with the landlord who owns the manufactured home. (Thus, the landlord has correctly made her application under the Act, versus under the *Manufactured Home Park Tenancy Act*.)

On October 15, 2020, the landlord, after not having received any rent in many months, served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). A copy of the Notice was in evidence, and I find that it was properly completed. The landlord served two copies the Notice, one by posting it on the door of the rental unit and one sent by registered mail. Copies of proof of service documents were submitted into evidence. The tenant did not dispute the Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support her submission, that the tenant did not pay rent as required by the oral tenancy agreement. There is no evidence before me that the tenant had or has a right under the Act to not pay the rent (of which arrears were \$5,180.00 as of October 2020). Finally, there is no evidence or information before me to find that the tenant applied to dispute the Notice within five days of service.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when (1) a notice to end the tenancy has been given by the landlord, (2) the tenant has not disputed the notice by making an application for dispute resolution, and (3) the time for making that application has expired.

Applying section 55 of the Act to the undisputed testimony and evidence regarding the tenant's failure to pay rent and failure to apply for dispute resolution, I hereby grant an order of possession to the landlord. This order shall go into effect two days after service upon the tenant. (Excluding any deemed receipt time as contemplated by [section 90](#) of the Act, however.)

An order of possession is issued to the landlord in conjunction with this Decision.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service.

If the tenant fails to comply with the order of possession, the landlord may file and enforce the order in the Supreme Court of British Columbia.

This decision is final and binding, and it is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 4, 2021

Residential Tenancy Branch