



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent, JG, attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the 10 Day Notice dated November 1, 2020, by posting the notice on his door on November 1, 2020. In accordance with sections 88 and 90 of the *Act*, I find the 10 Day Notice deemed served on November 4, 2020, three days after its posting.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord testified that the tenant was served with this application and notice of hearing by posting it on the tenant's door on December 10, 2020.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(2) *An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:*

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

In this case the landlord served the tenant by attaching a copy of the application to the tenant's door. I find that the tenant was served with the landlord's Application, as required by section 89 (2)(d) of the Act. I do note, however, that the service of the

application does not comply with section 89 (1) of the *Act*, and as such I can only deal with the landlord's application for an Order of Possession, and I dismiss the monetary component of the landlord's application with leave to reapply.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on January 1, 2020, with monthly rent set at \$700.00, payable on the first of the month. The landlord testified that they currently hold a security deposit in the amount of \$350.00 for this tenancy.

The landlord issued the 10 Day Notice on November 1, 2020 for failing to pay the rent and utilities for this tenancy since September 2020. The landlord testified that the tenant has not paid any of the outstanding rent or utilities since the 10 Day Notice was issued. The landlord is seeking an Order of Possession of the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The landlord is seeking an Order of Possession pursuant to a 10 Day Notice for Unpaid Rent and Utilities. The testimony of the landlord is that the tenant has failed to pay the outstanding rent and utilities within five days of being deemed to have received the 10 Day Notice. The tenant has not filed 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 November 30, 2020, the corrected effective date of the 10 Day Notice.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

I must consider the validity of the 10 Day Notice, and whether the landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*. Although the landlord included the November 2020 rent on the 10 Day Notice despite the fact that the tenant had until the end of the day to pay the rent for November 2020, I find that the 10 Day Notice is still compliant with section 52 of the *Act*. Section 46 of the *Act* states that "a landlord may end a tenancy if rent is unpaid on any day after the day it

is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”

As it was undisputed that the tenant did owe outstanding rent at the time the 10 Day Notice was issued, I find that the 10 Day Notice is still valid despite the incorrect amount indicated on the 10 Day Notice. The premature inclusion of the November 2020 rent on the 10 Day Notice does not relieve the tenant from their responsibility to pay the outstanding rent, or file an application disputing the 10 Day Notice. I am not satisfied that the tenant was in possession of any previous orders that had allowed them to withhold or deduct this rent. As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service 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.

The monetary portion of the landlord’s application is dismissed with leave to reapply.

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 22, 2021

Residential Tenancy Branch