



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on November 25, 2020 seeking an order of possession for the rental unit. This stems from the landlord issuing a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) to the tenant in October 2020.

This participatory hearing was convened after the issuance of a December 14, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with the validity of the 10 Day Notice.

This hearing was convened pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 8, 2021. An agent of the landlord (hereinafter the “landlord”) attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The tenant did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the Notice of Dispute Resolution. This means the landlord must provide proof that the document was served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord set out how they served this notice to the tenant via registered mail, with reference to the tracking number. This included all the evidence they intended to rely on for this hearing.

Based on the landlord's affirmed testimony, I accept they served notice of this hearing to the tenant, along with the evidence, in a manner complying with s. 89(1)(c) of the *Act*. This was to the rental unit in which the tenant still resided at the time of hearing. The hearing thus proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. The landlord applied for an order of possession pursuant to the 10 Day Notice given to the tenant on October 15, 2020.

The landlord provided a copy of the tenancy agreement that was signed by the landlord and the tenant on March 24, 2020. The monthly rent was \$1,250, payable on the first day of each month. The tenant paid a security deposit of \$625. The tenancy began on April 1, 2020.

A copy of the 10-Day Notice issued to the tenant here did not appear in the landlord's evidence. The landlord referenced a separate dispute resolution hearing file number pertaining to a separate tenancy. That tenancy was also the subject of a 10-Day Notice and the landlord submitted that the two matters were mistakenly interchanged at the Service BC office where they applied for this hearing. The landlord provided that alternate file number in which the 10-Day Notice for this tenant in this hearing appears.

The landlord provided the information from the correct 10-Day Notice in this hearing. They issued this document to the tenant on October 15, 2020, for the tenancy end date of October 25, 2020. This was for the full rent amount owing as of October 1, 2020 of \$1,250. This was signed and dated by an agent of the landlord. A Proof of Service was also completed by the landlord's agent, complete with a witness statement attested to by signature.

The landlord here also provided that the tenant had not paid the full amount of rent from October 2020 onwards. The last rent payment from the tenant was in October for the amount of \$1,150. In the following months November to March 2021, the tenant did not pay any rent amounts.

The tenant provided no documentary evidence in advance of the hearing. They did not attend the hearing; therefore, there is no oral testimony from the tenant in the record here.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10-Day Notice on October 18, 2020, three days after the landlord posted the document to the door of the rental unit. This service is set out and verified in the 'Proof of Service' document the landlord provided.

By s. 46(1) of the *Act*, a landlord may issue a 10-Day Notice, thereby ending a tenancy, if rent is unpaid on any day after the day it is due. This document must comply with the s. 52 requirements for form and content. By s. 46(4), a tenant may, within 5 days after receiving the document, either pay the overdue rent, or dispute the 10-Day Notice.

By s. 46(5), a tenant who does not pay the rent or make an application for dispute resolution is conclusively presumed to have accepted that the tenancy ends on the effective date on the 10-Day Notice. Where a tenant does not dispute, s. 55 allows for the granting of an order of possession to the landlord.

The 10-Day Notice in question here is found in the alternate dispute resolution hearing file number provided by the landlord in this hearing. I find this evidence was received through a Service BC Office, as per Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*. Through Rule 3.17, I accept this documentary evidence for consideration, and I find the tenant is not prejudiced by my consideration of this document as evidence. The landlord complied with Rule 3.1 and served the tenant the correct evidence package containing the related evidence to this tenancy when they did so via registered mail in November 2020, after this office issued the Notice of Dispute Resolution for this hearing.

Therefore, I accept the evidence before me as set out on the 10-Day Notice issued to the tenant on October 15, 2020. After this, the tenant failed to pay the rent owed in full by October 23, 2020, within the five days granted under 46(4) of the *Act*, and they did not dispute the 10-Day Notice within that five-day period.

I find that the tenant was obligated to pay the full rent amount of \$1,250, as per the tenancy agreement.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 25, 2020.

On my review of the document, I find it meets the requirements for form and content as set out in s. 52. The document is thus valid in that regard. For these reasons, I find the landlord is entitled to an Order of Possession as per s. 55.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 9, 2021

Residential Tenancy Branch