



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR-DR**

CNR-MT, OLC

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy *Act* (the “*Act*”).

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- An Order of Possession for unpaid Rent by direct request pursuant to sections 46 and 55.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- A request for more time to cancel a Notice to End Tenancy pursuant to section 66; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

The applicant/tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:25 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Both the named landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord SB testified that he served the tenant named on the tenancy agreement with the Notice of Dispute Resolution Proceedings package by posting it to the tenant’s door with tape on February 17, 2021. I deem the tenant served with the Notice of Dispute

Resolution Proceedings package on February 22, 2021, five days after February 17, 2021, the day it was posted to the tenant's door in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The tenant did not attend to present any evidence regarding the merits of his application for me to consider.

The landlord gave the following undisputed testimony. The tenancy began on June 1, 2020 with the single named tenant, initials NA. There is no other tenant named on the tenancy agreement. Rent was set at \$1,830.00 per month payable on the first day of each month. A security deposit of \$900.00 was collected from the tenant.

The tenant stopped paying rent in November. No rent was received for both November and December, 2020. On December 15, 2020, the co-landlord HS served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the tenant's door. A signed, witnessed proof of service document was provided as evidence, as was a copy of the landlord's notice to end tenancy. The notice states the tenant failed to pay rent in the amount of \$1,830.00 that was due on November 1, 2020. The landlord testified that the tenant has not paid any rent for January, February or March 2021 either.

Analysis

The tenant's application to dispute the notice to end tenancy is cancelled without leave to reapply for his failure to attend the hearing in accordance with rule 7.3 of the Residential Tenancy Branch Rules of Procedure. I note that the tenant filed the application to dispute the Notice on December 30, 2020, two days after the effective date stated on the Notice. Pursuant to section 66(3) of the *Act*, the Director must not extend the time limit to dispute a notice to end tenancy beyond the effective date of the notice. The tenant's application seeking more time to dispute the notice to end tenancy is dismissed without leave to reapply as well.

Based on the undisputed testimony and evidence of the landlord, I deem the tenant served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 18, 2020, three days after posting to the tenants' door pursuant to sections 89 and 90 of the *Act*.

The tenant failed to pay the full rent identified as owing on the Notice or make an application to dispute it within five days of receiving it, pursuant to section 46(4) of the *Act*. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days ended his tenancy on the effective date of the Notice. In this case, this required the tenant to vacate the premises by December 26, 2020, automatically changed to December 28th, the earliest possible effective date, in accordance with section 53 of the *Act*. As the tenant has not yet vacated the premises, I find that the landlord is entitled to an Order of Possession effective 2 days after service.

The landlord is given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within 2 days of receiving the Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 *Residential Tenancy Act*.

Dated: March 25, 2021

Residential Tenancy Branch