



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR

Introduction

On April 26, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

This hearing was scheduled to commence via teleconference at 9:30 AM on June 10, 2021.

S.B. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 15-minute teleconference. At the outset of the hearing, I advised S.B. that recording of the hearing was prohibited. She was reminded to refrain from doing so and she acknowledged this term. All parties in attendance provided a solemn affirmation.

She advised that she served a Notice of Hearing and evidence package to the Tenant by registered mail on May 6, 2021 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that a notice card was left on May 7, 2021 for the Tenant to pick up this package and that a final notice card for pickup was left on May 12, 2021; however, this package went unclaimed. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.B. advised that the tenancy started on February 1, 2010, that the subsidized rent was established at an amount of \$595.00 per month, and that it was due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant on October 14, 2020 by posting it to her door. The Notice indicated that \$595.00 was owing on October 1, 2020 and that the effective end date of the tenancy was October 28, 2020. She stated that the Tenant was required to provide her paperwork to the Landlord regarding her rent subsidy every January; however, the Tenant neglected to do so for 2020. As such, the Tenant's rent reverted to the market rent of \$1,475.00 per month. She stated that the Tenant was in arrears for rent prior to service of the Notice, but only the subsidized rent amount was noted as owing on the Notice. She advised that the Tenant has not paid any rent since service of the Notice, nor has the Tenant disputed the Notice. Furthermore, she stated that the reason she waited so long to make this Application is because she had made a mistake on a previous Application for what she believed were the same issues.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent or utilities when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent or utilities in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on October 17, 2020. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant was deemed to have received the Notice on October 17, 2021, she must have paid the rent in full or disputed the Notice by October 22, 2020 at the latest. As the Tenant did not pay the amount owing on the Notice or dispute the Notice within the five-day time frame, and as the Tenant did not have authorization from the Landlord, or a valid reason under the *Act* to withhold the rent, I find that the Tenant breached the *Act* and jeopardized the tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice. As such, I find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenant.

Conclusion

Based on the above, 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 *Residential Tenancy Act*.

Dated: June 10, 2021

Residential Tenancy Branch