



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on August 9, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that he sent the Notice of Hearing package to the tenant on April 21, 2021, by registered mail. Proof of mailing was provided into evidence. I find the tenant is deemed to have received this package on April 26, 2021, the fifth day after it was mailed, pursuant to Section 90 of the *Act*.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The landlord testified that current rent is \$1,280.00, and is due on the first day of each month. The landlord holds a security deposit of \$640.00.

The landlord testified that the tenant has not paid any rent since December of 2020. The landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the tenant's door on January 3, 2021. The Landlord provided a photo of the 10 Day Notice posted to the door. The 10 Day Notice specified that \$1,280.00 (January rent) was unpaid at that time.

The landlord testified that the tenant has not paid any money since being issued the 10 Day Notice, and now owes rent for January through till August. However, the Landlord is just seeking an order of possession, and not a monetary order.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant had a balance of unpaid rent in the amount of \$1,280.00 at the time the 10 Day Notice was issued. On January 3, 2021, the 10 Day Notice was posted to the door of the rental unit. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the tenant is deemed to have received the 10 Day Notice on January 6, 2021.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice.

The landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Pursuant to sections 72 of the *Act*, I authorize the landlord to retain \$100.00 from the security deposit in order to compensate him for the cost of filing this application. I find this leaves a security deposit balance of \$540.00, after deducting the filing fee.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: August 09, 2021

Residential Tenancy Branch