



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent or utilities. The application was made by way of the Direct Request process which was referred to this participatory hearing, and a Direct Request Decision was provided to the landlord which ordered the landlord to serve the tenant with a copy of the Decision and notice of this hearing.

The landlord attended the hearing with a witness, both of whom gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Direct Request Decision and all other documents by registered mail on August 20, 2021. The landlord has provided a copy of a Canada Post tracking document indicating that the registered mail was sent on that date and delivered on August 23, 2021 and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act* and the order of the director.

Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 27, 2020 and expires on September 30, 2021 thereafter reverting to a month-to-month tenancy, and

the tenant still resides in the rental unit. Rent in the amount of \$1,600.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord at that time collected a security deposit from the tenant in the amount of \$800.00, and the current landlord purchased the rental unit and still holds the security deposit. No pet damage deposit was collected from the tenant. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on June 1, 2021 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property in person and again by registered mail. A copy of the Notice has been provided for this hearing and it is dated June 1, 2021 and contains an effective date of vacancy of June 1, 2021. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). Also provided is a Contract of Purchase and Sale showing that the landlord purchased the rental unit. The landlord meant to write September 30, 2021 as the effective date of vacancy which is the end date of the fixed term.

On July 7, 2021 the landlord also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in person, and a copy has been provided for this hearing. It is dated July 7, 2021 and contains an effective date of vacancy of July 17, 2021 for unpaid rent in the amount of \$1,600.00 that was due on July 1, 2021. The tenant has not paid any rent since the Notice was served, and the landlord has provided copies of numerous text messages from the landlord to the tenant requesting that rent be paid. The landlord testified that the tenant did not respond to any text messages or phone calls, but told the landlord that the tenant already paid rent to the Residential Tenancy Branch. No rent has been paid since the Notice was served, and the landlord has not been served with an Application for Dispute Resolution disputing the Notice.

When asked why the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities does not contain an address of the landlord, the landlord testified that she has never been a landlord before, and was following the tenancy agreement which does not have an address of the landlord. However, the tenant has the landlord's phone number and the parties spoke on June 8, 2021.

The landlord's witness testified that he served the tenant with the Direct Request Worksheet, a copy of which has been provided for this hearing.

Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do either within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date contained in the Notice.

In this case, I am satisfied that the tenant was served with the Notice in person on July 7, 2021. I accept the undisputed testimony of the landlord that the tenant has not paid any rent and has not served the landlord with an Application for Dispute Resolution disputing the Notice. The notion that the tenant paid the rent to the Residential Tenancy Branch is not correct; the Branch does not accept rent from tenants on behalf of a landlord. I do not have an Application for Dispute Resolution from the tenant disputing the Notice, and I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

The landlord has not applied for a monetary order for the unpaid rent, and is required to do so in order to obtain an order that the tenant pay the outstanding rent. However, since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord as against the tenant in that amount, and I order that the landlord may keep \$100.00 of the security deposit held in trust, or may otherwise recover it by filing it for enforcement with the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 13, 2021

Residential Tenancy Branch