



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR

Introduction

The Landlords filed an application for dispute resolution, for an order of possession pursuant to section 46 of the *Residential Tenancy Act* (the “Act”), and a hearing occurred on June 15, 2021, at 11:00 am. However, the Landlords failed to attend that hearing, and as a result, their application was dismissed.

Subsequently, the Landlords applied for a review consideration and were granted a new hearing (Review Hearing) due to being unable to attend the first hearing for reasons beyond their control. The Review Hearing was scheduled for October 8, 2021, at 1:30 pm.

One of the Landlord’s attended the Review Hearing (this hearing) on October 8, 2021. However, the Tenants did not attend. The Landlord testified that he personally delivered the review hearing documentation, the new Notice of Hearing, and all evidence to the Tenants on July 10, 2021. I find the Tenants were sufficiently served with this documentation the same day it was delivered, July 10, 2021.

At a review hearing, I may confirm, vary or set aside the original decision or order.

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.

I note that, at the review hearing on October 8, 2021, the Landlord stated that he is not wanting to pursue a monetary order for unpaid rent or the filing fee, and that he is only seeking an order of possession. I hereby amend the Landlord's application accordingly.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

The Landlord testified that current rent is \$4,000.00, and is due on the first day of each month. The Landlord stated that the Tenants moved in on March 1, 2020, and they paid rent for the first few months, and starting July 1, 2020, they stopped paying any rent whatsoever. The Landlord stated that the Tenants now owe rent for July 2020, through till October 2021, which is around \$64,000.00. The Landlord is wanting to end the tenancy as soon as possible.

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 tenants' door on February 26, 2021. The Landlord stated that he personally posted this document to the Tenants' door, and he provided a photo into evidence. The 10 Day Notice specified that \$36,000.00 was unpaid at that time (if March 2021 rent was included). The Landlord stated that no rent has been paid since that time, and the amount owing is nearly double, after having to wait so many months for this hearing.

Analysis

Based on the unchallenged 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 tenants had a balance of unpaid rent in the amount of at least \$32,000.00 at the time the 10 Day Notice was issued. It appears the 10 Day Notice included March 2021 rent, and as of the time the Notice was issued, that rent was not yet due, which means the amount owing was likely only \$32,000.00 (rather than the \$36,000 amount listed on the 10 Day Notice) for July 1, 2020 – February 2021 (8 months). Regardless, a large sum of rent was owed at the time the Notice was issued. The Landlord posted the 10 Day Notice to the Tenants' front door on February 26, 2021. Pursuant to section 88 and 90 of the Act, I find the Tenants are deemed to have received this 10 Day Notice 3 days after it was posted, on March 1, 2021.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenants did either. As such, I find the tenants are 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 tenants.

Conclusion

The original decision on June 15, 2021, is set aside and the landlord is now granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail 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: October 08, 2021

Residential Tenancy Branch