



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenant;
- an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (One Month Notice) served to the tenant; and
- recovery of the filing fee.

The landlord/co-owner attended the hearing; however, the tenant did not attend.

The landlord stated he served the tenant with their application for dispute resolution and Notice of Hearing by registered mail on July 15, 2021. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I accept the landlord's undisputed evidence and find that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act. The hearing proceeded in the tenant's absence.

The landlord was affirmed and provided his testimony. The landlord also affirmed he was not recording the hearing.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all relevant evidence before me. Only the evidence specifically referenced 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 of the rental unit based upon the Notice and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of April 15, 2012, for a monthly rent of \$800, due on the 1st day of the month, and a security deposit of \$400 being paid by the tenant to the landlord. The landlord said that the current monthly rent is \$925.45.

The landlord submitted that on June 8, 2021, the tenant was served with the Notice, by personal service, listing a total unpaid rent of \$925.45 due as of June 1, 2021. The effective vacancy date listed on the Notice was June 18, 2021. Filed in evidence was a copy of the Notice.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice within five (5) days. The landlord said that since the Notice was issued to the tenant, she has made various payments on the outstanding rent deficiency and the subsequent monthly rent owed. The landlord submitted that the tenant was fully paid with her monthly rent through September 2021, but owed the rent for October 2021.

The landlord submitted that the tenant did not pay the June 2021 until long after the five days of receiving the Notice.

There was not a copy of a One Month Notice filed in evidence and there was insufficient evidence that one had been served to the tenant.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

A Notice sets out for the benefit of tenants that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explains that alternatively tenants have five days to dispute the Notice by making an application for dispute resolution.

I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice on June 8, 2021 by personal service, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, June 18, 2021. I therefore order that this tenancy ended on June 18, 2021.

As a result, I find that the landlord is entitled to and I grant an order of possession of the rental unit pursuant to section 55(2) of the Act, **effective two days after service** of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Although the landlord asked for a monetary order for the unpaid monthly rent for October 2021, I am unable to accommodate that request. The landlord did not make an application for monetary compensation for the unpaid rent and I am therefore unable to amend the application at the hearing.

I also grant the landlord recovery of the filing fee, due to his successful application.

At the landlord's request at the hearing, I authorize the landlord to deduct \$100 from the tenant's security deposit of \$400, to satisfy recovery of the filing fee paid for this application.

Conclusion

The landlord's application for an order of possession and recovery of the filing fee is granted. The order of possession is effective two (2) days after service on the tenant.

The landlord has been authorized to retain \$100 from the tenant's security deposit to recover the filing fee paid for this application.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 22, 2021

Residential Tenancy Branch