



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR, MNR-DR, FFL

Introduction

On September 08, 2021 the Landlord filed an Application for Dispute Resolution and requested that it be considered via a Direct Request Proceeding. On October 21, 2021, a Residential Tenancy Branch Adjudicator considered the Landlord's application for an Order of Possession, a monetary Order of unpaid rent, and to recover the fee for filing an Application for Dispute Resolution.

On October 21, 2021 the Adjudicator dismissed the Landlord's application for a monetary Order for unpaid rent, she granted the Landlord an Order of Possession, and she awarded compensation of \$100.00 for the fee paid to file an Application for Dispute Resolution.

The Tenant filed an Application for Review Consideration. On October 27, 2021 a Residential Tenancy Branch Arbitrator considered the application for review and concluded that a new participatory hearing should be convened.

The reconvened hearing was held to consider the Landlord's application for an Order of Possession, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution. At this hearing the Agent for the Landlord stated that no rent is currently outstanding. As such, I will not be considering the application for a monetary Order for unpaid rent.

The Manager stated that on September 22, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September of 2021 was personally served to the Tenant. In the absence of evidence to the contrary, I find that these documents were personally served to the Tenant on September 22, 2021, in

accordance with section 89 of the *Residential Tenancy Act (Act)*, and the evidence was accepted as evidence for these proceedings.

The Landlord submitted a Proof of Service document in which the Landlord declared that the Dispute Resolution Package was sent to the Tenant, via registered mail, on September 23, 2021. The Landlord submitted Canada Post documentation that shows a package was mailed to the Tenant on that date. In the absence of evidence to the contrary, I find that these documents were served to the Tenant, via registered mail, on September 23, 2021, in accordance with section 89 of the *Act*.

The Agent for the Landlord stated that the Tenant served the Landlord with notice of these proceedings. As the Tenant served the Landlord with notice of these proceedings, it is clear the Tenant was aware of the hearing on December 16, 2021. Therefore, the hearing commenced at the scheduled start time of 9:30 a.m. on December 16, 2021. By the time the teleconference was terminated at 9:49 a.m., the Tenant had not appeared.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent; pursuant to section 55 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on March 03, 2020;
- the Tenant agreed to pay monthly rent of \$550.00 by the first day of each month;
- the Tenant did not pay rent when it was due on September 01, 2021;
- the Tenant did not pay rent, in full, for September on October 01, 2021;

- all rent collected after September 01, 2021 was accepted on the basis of “use and occupancy”;
- no rent is currently due;
- the Tenant was served with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which is dated September 12, 2021;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was dated September 12, 2021 as a result of a typographical error;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should have been dated September 02, 2021;
- the Tenant should have known the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was dated in error, as it was served to the Tenant on September 02, 2021; and
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declares that the rental unit must be vacated by September 12, 2021.

The Manager stated that:

- on September 02, 2021 she personally served the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 12, 2021, to the Tenant;
- the Tenant and the Tenant’s advocate signed a Proof of Service” in which they acknowledge receipt of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on September 02, 2021.

The Tenant submitted a rent receipt, dated September 27, 2021, in which the Landlord acknowledged receiving a partial rent payment for September of 2021.

Analysis

Section 46(1) of the *Act* permits a landlord to end a tenancy if rent is not paid when it is due, by serving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due on September 01, 2021. I therefore find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

On the basis of the testimony of the Manager, I find that on September 02, 2021 she personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which was dated September 12, 2021. I find that the Manager’s testimony is strongly supported by the Proof of Service submitted in evidence, in which the Tenant

acknowledged receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on September 02, 2021.

Section 52(a) of the *Act* stipulates that to be effective, a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities must be signed and dated by the Landlord. I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings was signed and dated, although it was incorrectly dated September 12, 2021.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and that are not intended to mislead do not invalidate the form used.

I accept the Landlord's submission that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was inadvertently dated incorrectly and that it should have been dated September 02, 2021. I find that the Tenant knew, or should have known, that the date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was incorrect, as she received the Notice on September 02, 2021. I find, pursuant to section 10(2) of the *Act*, that the incorrect date on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities does not invalidate that Notice, as it was not intended to mislead and it does not substantively effect the substance of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. I therefore amend the date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 68 of the *Act*, to reflect that it is dated September 02, 2021, which is the date it was served to the Tenant.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is effective ten days after the date that the Tenant receives the Notice. As the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on September 02, 2021, the earliest effective date of the Notice is September 12, 2021, which is the declared effective date of this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Section 46(4) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or the tenancy may dispute the notice by making an application for dispute resolution.

Section 46(5) of the *Act* stipulates that if a tenant who has received a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities 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.

There is no evidence before me to establish that the Tenant filed an Application for Dispute Resolution to dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities or that the Tenant paid the outstanding rent within five days of September 02, 2021. I therefore find, pursuant to section 46(5) of the *Act*, that the Tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and that she was required to vacate the unit on September 12, 2021.

As the Tenant is conclusively presumed to have accepted this tenancy ended, pursuant to section 46(5) of the *Act*, I find the Landlord is entitled to the Order of Possession that was granted to the Landlord on October 21, 2021.

In adjudicating this matter, I have placed no weight on the submission made in the Application for Review Consideration that the rent was not paid on time for September due to an error by the Ministry of Social Development and Poverty Reduction. Even if this declaration is true, the declaration does not negate the conclusive presumption established by section 46(5) of the *Act*.

Upon receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the Tenant had the option of either paying the outstanding rent claimed by the Landlord or filing an Application for Dispute Resolution. In the event the Tenant believed that her rent had been paid for September when she received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the Tenant should have filed an Application for Dispute Resolution, in which the Tenant applied to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. At that hearing, the Tenant could have argued the rent had not been paid for reasons beyond her control.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution. I therefore find the Landlord is entitled to the monetary Order for \$100.00 that was granted to the Landlord on October 21, 2021.

Conclusion

As I have concluded that the Landlord is entitled to the Order of Possession that was granted to the Landlord on October 21, 2021 and to the monetary Order for \$100.00 that was granted to the Landlord on October 21, 2021, I confirm both of those Orders.

The monetary Order, dated October 21, 2021, may be served on the Tenant, filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Order of Possession, dated October 21, 2021, may be served on the Tenant, filed in the Supreme Court of British Columbia, and 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 Act.

Dated: December 16, 2021

Residential Tenancy Branch