



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lu'ma Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This hearing convened as a result of 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) issued to the tenant.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated November 8, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agents (landlords) attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), the landlord's application and documentary evidence was considered.

The landlord testified that they served the tenant the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on November 10, 2021. The landlord provided the tracking number as proof of service, which was filed in evidence.

Based on the landlord's undisputed testimony and evidence, I find that the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on September 1, 2016. The landlord testified that the tenant is on an income based monthly rent, with the current monthly rent being \$1,450.

The landlord, KE, testified that on August 16, 2021, he served the tenant with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$11,040 as of August 1, 2021. The effective date listed on the Notice was August 28, 2021. Filed in evidence was a copy of the Notice and proof of delivery 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 5 days, or any monthly rent since August 11, 2021.

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, as is the case here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explains that alternatively the tenant

had 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, 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.

Under the Act, a document served by posting on the door is deemed to have been received on the third day after posting, or in this case, August 19, 2021. The effective date listed, August 28, 2021, is automatically corrected to August 29, 2021, under the Act.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, in this case, August 29, 2021.

As a result, I order the tenancy ended on August 29, 2021, the corrected effective date. As a result, I **grant** the landlord 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.

Conclusion

The landlord's application for an order of possession of the rental unit has been granted in the above terms.

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: December 3, 2021