



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

On September 10, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing, with L.P. attending as an agent for the Landlords. However, the Tenant did not attend the hearing at any point during the 23-minute teleconference. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of L.P., provided a solemn affirmation.

L.P. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on September 27, 2021 (the registered mail tracking number is noted on the first page of this Decision). He stated that the Tenant signed for this package on October 12, 2021. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been duly served the Landlords’ Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Landlord M.K. advised that the tenancy started on or around January 1, 2017 as a verbal, unwritten tenancy agreement. She stated that the rent was established at an amount of \$250.00 per month and that it was due on the first day of each month. Neither a security deposit nor a pet damage deposit was paid.

L.P. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on August 24, 2021 by registered mail and that the Tenant received this on September 3, 2021 (the registered mail tracking number is also noted on the first page of this Decision).

M.K. testified that the Tenant did not pay any rent from April 2021 onwards. Thus, the Notice was served. She submitted that the Tenant would ordinarily pay rent in cash, but the Tenant informed her that she would no longer be paying any rent. Therefore, the Landlords are seeking an Order of Possession. She stated that the Tenant did not have any authorization to withhold the rent. The effective end date of the tenancy was noted on the Notice as September 10, 2021.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, M.K. advised that the Tenant's dispute address was the "cabin" even though it was not noted as such on the Notice. I find that I can reasonably infer that the Tenant knew this Notice was for her and it applied to the cabin for which

she resided in. As such, I find it appropriate to amend the Notice under Section 68 of the *Act* to correct this detail. As well, I have amended the Style of Cause on the first page of this Decision to reflect that correction.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant would have been deemed to have received the Notice on August 29, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section 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."*

As the Notice was deemed received on August 29, 2021, the Tenant must have paid the rent in full by this date or disputed the Notice by Monday August 30, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full or dispute this Notice. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I grant the Landlords an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

As the Landlords were successful in their Application, I find that the Landlords are entitled to recover the \$100.00 filing fee.

Conclusion

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlords are provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: January 31, 2022

Residential Tenancy Branch