Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:05 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The respondent tenants DS, TS and MS (the tenants) did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

The landlord affirmed he rented the rental unit to three tenants: DS, TS and MS. The tenancy agreement states the tenants are DTS and MS. The landlord affirmed that by mistake DS and TS were listed as DTS in the tenancy agreement. The landlord is not sure if MMS’s middle name is M, but her first and last names are M and S. The application lists respondents tenants DS, TS and MMS.

The landlord submitted the rental application form listing tenants D/TS, proof of home insurance issued for DS, an application for a fob to access the rental unit by TS, and a tax document indicating the name of DS.

I accept the landlord's testimony that tenants DS, TS and MS were served with the notice of hearing, the interim decision and the evidence (the materials) by registered mail on January 18, 2022, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on January 23, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession under the Notice?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on October 09, 2020. Monthly rent is $1,700.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of $850.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord attached the Notice to the tenants' door on December 02, 2021. The landlord submitted a witnessed proof of service (RTB 34) indicating the Notice was served on December 02, 2021.

A copy of the Notice was submitted into evidence. It is dated December 02, 2021. The Notice is signed by the landlord, gives the address of the rental unit, states the grounds to end the tenancy and it is in the approved form. The effective date is December 10, 2021. It states: "You have failed to pay rent in the amount of $1,700.00 + 50 (late fee) = $1,750.00 on December 01, 2021 and move in fee + bylaw violation of 250+200 on November 25, 2021"

The tenants paid $1,700.00 on January 21, 2022 and continue to occupy the rental unit.

The landlord submitted a direct request worksheet.

Analysis

I accept the uncontested testimony offered by the landlord and the proof of service (RTB 34) that the landlord served the Notice by attaching it to the tenants' door on December 02, 2021, in accordance with section 88(g) of the Act. Per section 90(c), the tenants are deemed to have received the Notice on December 05, 2022.

Based on the landlord's convincing testimony, the tenancy agreement, the proof of home insurance and the application for a fob to access the rental unit, I find that the landlord and the tenants agreed to a tenancy and the tenants are obligated to pay monthly rent in the amount of $1,700.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(4)(a) of the Act provides the tenant must pay rent within 5 days after receiving the Notice.

Based on the landlord's convincing testimony, the Notice and the direct request worksheet, I find the tenants only paid the rent due on December 01, 2021 on January 21, 2022, after the deadline of section 46(4)(a) of the Act.

Pursuant to section 53(2) of the Act, the effective date is automatically corrected to December 15, 2022.

I find the form and content of the Notice complies with section 52 (a), (b), (c) and (e) of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and it is in the approved form.

Section 68(1) of the Act allows the arbitrator to amend the Notice if:

> If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that
> (a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
> (b)in the circumstances, it is reasonable to amend the notice.

Based on the landlord's convincing testimony, I am satisfied the tenants were aware that when they received the Notice the rent in arrears was $1,700.00 for December 2021 rent and I find it is reasonable to amend the Notice.

The landlord is entitled to an order of possession effective two days after service on the tenant, per section 55(1)(b) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee paid for this application.

Conclusion

Pursuant to section 55(1)(b) of the Act, I grant an order of possession to the landlord 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.

Pursuant to section 72(2)(b), the landlord is authorized to deduct $100.00 from the deposit to recover the filing fee.

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: April 06, 2022

Residential Tenancy Branch