



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On January 16, 2022, the Landlord applied for an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 5, 2022 (the 10 Day Notice).

The Landlord attended the hearing; the Tenants did not. The Landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Tenants by email on January 28, 2022, and provided documentary evidence demonstrating that the parties communicated by email regarding the tenancy.

Based on the Landlord's affirmed testimony and documentary evidence, I find the Tenants served in accordance with section 89 of the Act, and deem the documents received by the Tenants on January 31, 2022, in accordance with section 44 of the Residential Tenancy Regulation (the regulation).

Issue to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began October 1, 2021; rent is \$1,300.00, due on the first of the month; and the Tenants paid a security deposit of \$650.00, which the Landlord still holds.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified that the Notice was served on the Tenants on January 5, 2022, by email and by posting it to the door. The Landlord submitted a copy of the email as evidence.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenants failed to pay rent in the amount of \$1,300.00 due on January 1, 2022.

The Landlord testified that it appears the Tenants have abandoned the unit, and that their belongings are still in the unit.

The Landlord testified that his last communication with the Tenants was on December 7, 2021, when they indicated they would be travelling for work, then for vacation in January. The Landlord testified he has attempted to contact the Tenants many times, via email, text, phone, and social media, but has not received a response.

The Landlord testified that the Tenants have not been paying rent, but that he is not seeking the unpaid rent, just an order of possession.

Analysis

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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Based on the Landlord's affirmed undisputed testimony and documentary evidence, I find the Landlord served the 10 Day Notice on the Tenants by email on January 5, 2022, in accordance with section 88 of the Act. I deem the documents received by the Tenants on January 8, 2022, in accordance with section 44 of the regulation.

I find that the Tenants did not file an application for dispute resolution within 5 days of January 8, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 46(5) to have accepted that the tenancy ended and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

Although section 55(4) of the Act allows an arbitrator to grant a monetary order for non-payment of rent in these circumstances, the Landlord confirmed he was only seeking an order of possession.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

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 13, 2022

Residential Tenancy Branch