



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

On June 13, 2022 the Landlord filed an Application for an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) they issued on June 2, 2022. They also applied for reimbursement of the Application filing fee.

The Landlord applied via the Direct Request method which would not require a participatory hearing; however, an Adjudicator reviewed that Application and was not satisfied on details about the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74 (2) of the *Residential Tenancy Act* (the “Act”) on November 24, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – service of Notice of Dispute Resolution to the Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the notice of this hearing. This means the Landlord must provide proof that they served the Notice of Dispute Resolution Proceeding document (the “Notice”) to the Tenant in a verified manner allowed under s. 89 of the *Act*, and I must accept that evidence.

in the hearing the Landlord provided that they served a copy of the Notice, including their evidence, via registered mail to the Tenant on July 20, 2022. They provided an image of the post office receipt and the registered mail label bearing the tracking number. This individual mail item was unclaimed and returned to the Landlord.

The Tenant presented that they were instructed by health providers to stay away from the rental unit, and they informed the Landlord of this. They did not provide an alternate or forwarding address to the Landlord while away from the rental unit. They asked the Landlord to re-send the package to them, and they went to check often. They had received registered mail notification from the post office; however, they were not able to pick up the registered mail from the post office where it was held.

From the Landlord's evidence I find they served the document in a manner prescribed by the *Act*. This was within three days after they received the Notice, as required by s. 59(3) of the *Act*. By s. 90 I deem the documents served to the Tenant on July 25, 2022.

Preliminary Matter – Tenant's request for adjournment

The record at the Residential Tenancy Branch shows the Tenant called on August 22, 2022. At that time the Residential Tenancy Branch informed the Tenant of this hearing date. On November 21, 2022 the Tenant called again and the Residential Tenancy Branch confirmed the call-in information for the hearing.

The Tenant requested an adjournment in this matter. This was for miscellaneous reasons as stated in the hearing, primarily focusing on their inability to return to the rental unit as ordered by medical professionals.

I find the circumstances do not warrant an adjournment. The Tenant was unable to retrieve the registered mail containing the Notice; however, the Tenant was in contact with the Residential Tenancy Branch in late August. This afforded the Tenant over two months to prepare for the hearing, or to seek assistance in order to do so. I find an adjournment would inordinately prejudice the Landlord. Moreover, the Tenant attended the hearing in order to be heard, and I informed the parties at the outset that their statements were testimony, and testimony is direct, first-hand evidence in this matter.

I dismiss the Tenant's request for an adjournment in this matter and proceed with the Landlord's evidence as provided to the Residential Tenancy Branch and the Tenant within the timelines dictated by the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to issue an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the Act

TEXT

Background and Evidence

The Landlord presented a copy of the tenancy agreement that the parties jointly signed on February 10, 2020. This was for the tenancy starting on March 1, 2020, continuing until “Feb 29/20” and thereafter on a month-to-month basis. The rent amount was set at \$1,300 per month and the Tenant paid a security deposit of \$650. The agreement specifies that rent was to be paid on the first day of each month.

The parties agreed that the rent amount increased to \$1,318 on February 1, 2022.

Specifically in regard to the contract, the Tenant noted that the agreement referred to “hazards” that they are required to report to the Landlord or building manager. The Tenant reported several issues to the Landlord; however, the Landlord “won’t check the issue.” They noted several things broken in the rental unit, and the “Landlord never fulfilled the contract from day one.” Moreover, the Landlord “has several times refused to take rent.”

The Landlord provided a copy of the 10-Day Notice they signed on June 2, 2022. This document gave the move-out date of June 12, 2022. This listed the failure by the Tenant to pay the rent of \$1,318 due June 2, 2022. The Landlord served this document by attaching it “on the door or in mail box or mail slot.” As provided in a “Proof of Service” document, a witness also signed the document to show they observed this method of service, on June 2, 2022 at 10:30am.

In the hearing, the Tenant noted they received this document attached to the door of the rental unit. They described how they returned to the rental unit and found this document attached to the door, doing so here on June 10.

The Tenant stated they filed an Application to dispute this end-of-tenancy notice. They listed other hearings in which they were a party to the dispute resolution process, specified by Residential Tenancy Branch file number. The Tenant could not identify the specific file reference for their Application to dispute this end-of-tenancy notice.

The Landlord in the hearing reiterated that previously in the tenancy there were partial payments or delayed payments. This current situation with the Tenant was no rent payments made from June 2022 through to November 2022, the month in which this hearing was scheduled.

The Tenant stated their position in this matter: the Landlord has not received rent because the Landlord was not addressing the Tenant's concerns about health and safety issues present and ongoing in the rental unit. The Tenant stated they were not staying in the rental unit even though their personal property remained in the rental unit. They stated that they made no rent payment from May 2022 through to November 2022.

One witness who attended the hearing, as called by the Tenant, described their observation of an attempt by the Tenant to pay rent, with the Landlord not accepting that payment.

Analysis

From the evidence and testimony of both parties, I am satisfied that a tenancy agreement was in place. The Landlord thus provided evidence of the specific terms of the rent payments, as well as the amount the Tenant was meant to pay each month.

I accept the evidence before me that the Tenant failed to pay the rent owed in full by June 10, 2022, within the five days granted under s. 46(4) of the *Act*, and factoring in the deemed service date of June 5, 2022, as per s. 90(c) of the *Act*.

Though the Tenant described filing an Application to dispute this end-of-tenancy notice, I find they presented no evidence of that and could not refer to a file number in the Residential Tenancy Branch. The Residential Tenancy Branch, in creating this matter for hearing did not cross-reference any application in place from the Tenant concerning the same 10-Day Notice. I find the Tenant did not apply to dispute this 10-Day Notice within the required timeline as set out on that document served to them by the Landlord on June 2, 2022.

Because the Tenant did not pay the rent or file an application for dispute resolution, they are conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice, June 12, 2022.

On my review of the document, the 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52 which is a necessary category for any end-of-tenancy document a landlord may serve.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the Landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52. By this provision, I find the Landlord is entitled to an Order of Possession.

The *Act* s. 26 outlines a tenant's obligation to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant here presented no authorization from either the Landlord or the Residential Tenancy Branch for their withholding of rent in this tenancy. The Tenant confirmed they did not pay rent from June 2022 through to November 2022 while maintaining occupancy of the rental unit. They provided no notice to the Landlord to end the tenancy.

As the Landlord was successful in this Application, I find that they are entitled to recover the \$100 filing fee paid for their Application.

Conclusion

Under s. 55(1) and s. 55(3) of the *Act*, I grant an Order of Possession to the Landlord, effective two days after they serve it to 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.

I grant a Monetary Order of \$100 to the Landlord. I order the Landlord to retain \$100 from the Tenant's security deposit of \$650 in full satisfaction of the monetary award for the filing fee. The remainder of the Tenant's security deposit of \$650 will be dealt with at the end of this tenancy in accordance with s. 38 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 25, 2022

Residential Tenancy Branch