



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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 provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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.

Preliminary Issue- Service of 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and Service of Notice of Hearing Documents and Landlords Application

At the outset of the hearing the tenant testified that he only became aware of this hearing due to a reminder email from the Branch and stated he did not receive any documents for this hearing. The landlord provided documentary evidence from Canada Post showing that he sent the document by registered mail including the tracking number to show that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was signed for and accepted by the tenant on September 20, 2022; accordingly, I am satisfied that the tenant was served this document in accordance with the section 88 of the Act.

The landlord provided documentary evidence including the Canada Post tracking number to show that the landlord sent the Hearing Package Documents and Application along with the evidence by registered mail on October 14, 2022. The landlord provided further evidence that the package was returned unclaimed on November 12, 2022. I find that the landlord has acted in accordance with section 89 of the Act and discharged his duty. The tenant advised that he was away during that time and would explain why he didn't receive the package. The hearing proceeded and completed on this date.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

DQ testified that the tenancy began on June 15, 2020. The current monthly rent of \$4500.00 is due on the fifteenth of the month. The tenant paid a security deposit of \$2525.00 which the landlord still holds. DQ testified that the tenant did not pay his rent on September 15, 2022. On September 16, 2022, DQ issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant paid \$2500.00 on October 3, 2022 and \$2000.00 on October 4, 2022. DQ testified that the tenant failed to pay the rent on time for October 15, 2022 as well. DQ testified that that wasn't paid in full until November 4, 2022. DQ testified that this has been ongoing for over a year and wants an order of possession.

BS testified that he does not dispute the facts as submitted by the landlord. BS testified that he would prefer to pay the rent on the first of each month. BS testified that he will be making arrangements and will be moving in the near future but cannot give a definitive date. BS testified that he would like to work with the landlord to resolve the matter until he moves out.

Analysis

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice.

In this case, this required the tenant to vacate the premises by October 1, 2022. As that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord is entitled to retain \$100.00 from the security deposit for the recovery of the filing fee for this application.

Conclusion

The landlord is granted an order of possession. The landlord is entitled to retain \$100.00 from the security deposit for the recovery of 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: November 14, 2022

Residential Tenancy Branch