



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on November 7, 2022 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord and landlord's agents attended the hearing and were given a full opportunity to provide testimony, present evidence and make submissions.

The landlord testified that at 10:52 a.m. on November 10, 2022, the tenant was personally served with a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision. A witnessed proof of service form signed by the tenant acknowledging receipt was submitted as evidence.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

In the hearing, the landlord withdrew the application pertaining to recovery of the filing fee as their main concern was getting possession of the unit.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Background and Evidence

The tenancy began on January 1, 2022. The current monthly rent is \$720.00 payable on the 1st day of each month.

The landlord submitted a copy of a 10 Day Notice dated August 8, 2022. The 10 Day Notice indicates an outstanding rent amount of \$2160.00 which was due on August 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord's agent J.T. testified that on August 8, 2022 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A picture of the envelope containing the 10 Day Notice was submitted as evidence. J.T. testified that as he was taking the picture, the tenant's girlfriend opened the door, so he handed the 10 Day Notice to her.

The landlord testified the outstanding rent was not paid within 5 days of the 10 Day Notice being served.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted an end to the tenancy.

I am satisfied that the tenant was deemed served with the 10 Day Notice on August 11, 2022, three days after its posting, pursuant to sections 88 & 90 of the Act. The tenant would have had until August 16, 2022 to pay the outstanding amount as per the 10 Day Notice which he failed to do.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order 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: December 15, 2022

Residential Tenancy Branch