



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

This matter was convened to address an Application for Dispute Resolution filed by the Landlord. The Landlord sought an order of possession for unpaid rent pursuant to the Residential Tenancy Act (the Act). Although the hearing was initiated by Direct Request Proceeding, an adjudicator adjourned the matter to a participatory hearing which was heard on December 2, 2022.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on November 9, 2022. In support, the Landlord submitted copies of Canada Post registered mail receipts confirming the date and time of purchase and providing the tracking number. The Tenant also acknowledged receipt. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received these documents on November 14, 2022, five days after they were mailed.

The Tenant did not submit documentary evidence in response to the Landlord's application.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The parties agreed the tenancy began on December 31, 2021. Rent of \$2,150.00 per month is due on the last day of each month. Rent received is applied to the following month. The Tenant paid a security deposit of \$1,000.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord testified the Tenant did not pay rent when due. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 24, 2022 (the 10 Day Notice). The 10 Day Notice indicates that rent of \$2,300.00 remained unpaid from payments due on May 31 and June 30, 2022.

The 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The Landlord testified that the 10 Day Notice was served on the Tenant on July 24, 2022, by leaving a copy at the Tenant's residence with an adult who appeared to reside with the Tenant, and that service in this manner was witnessed by ND. A signed Proof of Service Notice to End Tenancy document was submitted in support. The Tenant testified that he had someone staying at the rental property while he was away camping, but that the 10 Day Notice was received on or about August 14, 2022.

The Landlord testified rent has not been paid since the 10 Day Notice was issued. The Landlord testified that the Tenant has made promises to pay rent but it was never received.

The Tenant testified that only \$150.00 was due when he received the 10 Day Notice but acknowledged that payments have not been made for rent due from July 31, 2022 to date. The Tenant also suggested it was the Landlord's obligation to collect rent from the Tenant. The Tenant also testified with respect to the improvements he has made at the rental property.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the Act confirms that 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.

Section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy in the approved form.

In this case, I find the 10 Day Notice submitted into evidence complies with the form and content requirements of section 52 of the Act. Further, I find the 10 Day Notice was served on the Tenant by leaving a copy with an adult who appeared to reside with the Tenant on July 24, 2022. Therefore, pursuant to section 46(4) of the Act, the Tenant had until July 29, 2022 to pay rent in full or to dispute the 10 Day Notice. I find there is insufficient evidence before me that the Tenant did either. I am supported in this conclusion by the testimony of the Tenant who advised that he was away until August 14, 2022, and his acknowledgment that no rent has been paid from July 31, 2022 to present. As a result, pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit.

Considering the above, I find the Landlord is entitled to an order of possession which will be effective two days after it is served on the Tenant.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in 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 2, 2022

Residential Tenancy Branch