



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL, FFL**

Introduction

On December 8, 2022 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on April 18, 2023 as a teleconference hearing. The Landlord’s Agent K.M. and the Landlord’s Counsel M.G. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent, Counsel, and I were the only persons who had called into this teleconference.

The Landlord Counsel submits that the Application and documentary evidence package was served to the Tenant by Canada Post Registered Mail on December 15, 2022. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on December 20, 2022. The Landlord’s Counsel stated that the Landlord sent further evidence to the Tenant on March 20, 2023 by Registered Mail. I find these documents are deemed to have been received by the Tenant on March 25, 2023 pursuant to Section 88 and 90 of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The Landlord's Agent and Counsel were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the start of the hearing, the Landlord's Counsel stated that the Landlord was mainly seeking an order of possession based on the unpaid rent. The Landlord's Counsel stated that the Landlord wishes to withdraw the monetary claims for unpaid rent and for the return of the filing fee. The monetary claims were withdrawn accordingly.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent, pursuant to Section 55 of the *Act*?

Background and Evidence

The Landlord's Counsel testified that the tenancy began on April 10, 2019. Rent in the amount of \$395.00 is due to the Landlord on the first day of each month. The Tenant did not pay any deposits to the Landlord. A shelter form was submitted in support.

The Landlord's Counsel testified the Tenant did not pay rent in the amount of \$395.00 when due on November 1, 2022. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 18, 2022 (the "10 Day Notice") with an effective vacancy date of December 3, 2022. The Landlord's Counsel stated that the 10 Day Notice was served to the Tenant by Canada Post Registered Mail on November 18, 2022. The Landlord submitted a copy of the 10 Day Notice and Registered Mail receipt in support.

The Landlord's Counsel testified that the Tenant has made no rent payments to the Landlord since the 10 Day Notice was served to the Tenant. As such, the Landlord is seeking an Order of Possession.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states 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.

I find based on the Landlord's Counsel's uncontested submissions, that the Landlord served the 10 Day Notice to the Tenant by Registered Mail on November 18, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received 5 days later, on November 23, 2022.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until November 28, 2022 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's Counsel's undisputed submissions that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$395.00 for November 2022, and has also failed to pay rent any rent since. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, December 3, 2022, pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and 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: April 18, 2023

Residential Tenancy Branch