



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

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;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord states that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 14, 2016 and has provided the Customer Receipt Tracking numbers in his direct testimony as confirmation. A review of the submitted documentary evidence shows a copy of the Canada Post Registered Mail Customer Receipt and the two tracking numbers for each tenant. I accept the undisputed affirmed evidence of the landlord and find that both tenants have been properly served as per section 90 of the Act.

The landlord stated that the amendment to the application was emailed to the tenant, S.D. Section 88 and 89 of the Act does not provide for the service of an Amendment to an Application for Dispute Resolution in this manner. I find in the absence of the tenant and any confirmation that the tenants whom received it the monetary amendment is dismissed with leave to reapply. The hearing shall proceed on the original application for dispute only.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 15, 2016 on a fixed term tenancy ending on May 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated April 3, 2016. The monthly rent is \$1,575.00 payable on the 1st day of each month with a \$200.00 concession for the 1st 10 months. A security deposit of \$787.50 was paid on April 3, 2016.

The landlord states that the tenants were served with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated October 2, 2016 by posting it to the rental unit door on October 2, 2016. The 10 Day Notice states that the tenants failed to pay rent of \$1,375.00 that was due on October 1, 2016. There is also a notation that the tenants owe a \$20.00 late fee.

The landlord states that as of the date of this hearing no rent has been paid since the 10 Day Notice was served on October 2, 2016 nor is the landlord aware of any application filed by the tenants to dispute the 10 Day Notice.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the 10 Day Notice was served to the tenant on October 2, 2016 by posting it to the rental unit door. I also accept the undisputed affirmed evidence that no rent has been paid since the 10 Day Notice was served nor has an application for dispute been filed by the tenants. I also find that as the 10 Day Notice was posted to the rental unit door on October 2, 2016 that it is deemed served as per section 89 of the Act 3 days later on October 5, 2016. As such, the effective end of tenancy date of October 12, 2016 is corrected to October 15, 2016.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 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 effective date of the notice. In this case, this required the tenants to vacate the premises by October 15, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The tenants must be served with this order. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I also find that as the landlord has been successful in his application for dispute that he is entitled to recovery of the \$100.00 filing fee.

The tenants must be served with this order. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

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 02, 2016

Residential Tenancy Branch