



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the Tenant had been served the Application for Dispute Resolution and Notice of Hearing documents on September 29, 2018, by posting it to the front door of the rental unit. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 46 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on April 1, 2017, as a month to month tenancy. The Landlord testified that the Tenant paid a subsidized rate for rent in the amount of \$375.00 that was due by the first day of each month. The Landlord also testified that the Tenant paid a \$250.00 security deposit at the outset of the tenancy and that the security deposit was half of the market rent rate.

The Landlord testified that he served the Tenant a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on September 8, 2018, by posting the Notice to the front door of the rental unit. The Notice has an effective date of September 21, 2018, and an outstanding rent amount of \$375.00. The Notice informed the Tenant of the right to dispute the Notice within 5 days after receiving it. The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

The Landlord testified that the Tenant had not paid rent for September, October, or November 2018. The Landlord testified that the Tenant has not filed to dispute the Notice to end tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) 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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect,
- or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant did not pay the rent or dispute the Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55(2) of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to sections 55 of the *Act*, I grant the Landlord an order of possession for the rental unit, effective **two days** after service of this Order on the tenant,

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant 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: November 8, 2018

Residential Tenancy Branch