



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

On February 24, 2020, the Landlord applied for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"). On March 24, 2020, this Application was set down for a participatory hearing on April 27, 2020 at 1:30 PM.

The Landlord attended the hearing with J.W. attending as a witness for the Landlord. However, the Tenant did not attend the 29-minute hearing. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to the Tenant by hand mail on March 24, 2020 and J.W. confirmed that he witnessed this personal service. Based on this undisputed, solemnly affirmed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on January 15, 2019 and that rent was currently established at \$750.00 per month, due on the first day of each month. A security deposit of \$375.00 and a pet damage deposit of \$100.00 were also paid. The Landlord submitted a copy of the tenancy agreement as documentary evidence.

She stated that the Tenant was in arrears for September 2019 rent of \$640.00 and she did not pay October 2019 rent either. Thus, \$1,390.00 was outstanding on October 1, 2019 so the Notice was served to the Tenant by hand on October 24, 2019. The Notice indicated that the effective end date of the tenancy was November 3, 2019.

She also stated that she set up a payment plan with the Tenant to pay \$1,000.00 on the 20th day of each month and that the Tenant had paid \$1,000.00 on November 20, 2019 to put towards the arrears. However, the Tenant has not paid any rent since the Landlord received this last payment.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 46 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was served the Notice on October 24, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on October 29, 2019, the Tenant must have paid the rent in full or disputed the Notice by this date at the latest. The undisputed evidence is that the Tenant did not pay the rent or make an Application, and there is no evidence before me that permitted the Tenant to withhold the rent.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

Conclusion

Based on the above, 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: April 27, 2020

Residential Tenancy Branch