



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR-DR MNR-DR FFL

Introduction

The landlord seeks an order of possession and a monetary order on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to sections 55(2)(b) and 55(4) of the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks to recover the cost of the application filing fee under section 72 of the Act.

Preliminary Issue: Service

The landlord attended the hearing, but the respondent tenant did not. In such cases where a respondent does not attend, I must be satisfied that the respondent was properly served with the Notice of Dispute Resolution Proceeding. Such service must comply with the Act and the Residential Tenancy Branch’s *Rules of Procedure*, and there must be evidence to support a finding that such service in fact occurred.

The landlord testified under oath that he served the Notice of Dispute Resolution Proceeding by registered mail, which is a permitted method of service under section 89 of the Act. The landlord submitted into evidence documentary proof consisting of a Canada Post registered mail receipt and a registered mail tracking number proving that the tenant was served by registered mail on December 5, 2021.

Given the evidence before me, it is my finding that the tenant was appropriately served with the Notice of Dispute Resolution Proceeding and documentary evidence necessary for her to participate fully in these proceedings.

Issue

Whether the landlord is entitled to an order of possession and a monetary order under section 55(4) of the Act.

Background and Evidence

The tenancy began on July 1, 2015. Monthly rent, which was due on the first day of the month, was \$2,400.00. The tenant paid a security deposit of \$1,200, which the landlord currently holds in trust pending the outcome of this application.

A copy of a written tenancy agreement was in evidence. There are two tenants named on the tenancy agreement, but this application is only being made against the female tenant. The landlord explained that the two tenants were married when the tenancy began, but that they later divorced, and the male tenant moved out of the rental unit a few years ago. He is, thus, not a party to this dispute.

The landlord gave evidence that he served the Notice (a copy of which was in evidence) on the tenant in-person on October 9, 2021. He explained that he conversed with the tenant through a window; the tenant refused to open the door on account of her being in the middle of taking a shower or something. At the tenant's instructions the landlord then left the Notice in the mailbox.

To date the tenant did not dispute the Notice or pay the full amount of arrears, which are \$6,900.00. This is the amount being sought, in addition to the cost of the filing fee.

Analysis

A tenant must pay rent when it is due under a tenancy agreement (section 26 of the Act).

A landlord may end a tenancy if rent is unpaid on any day after it is due by issuing a 10 Day Notice to End Tenancy for Unpaid Rent (section 46(1) of the Act).

If the tenant does not pay the amount of rent owing within 5 days of receiving the Notice and does not dispute the Notice by making an application to dispute the Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by the effective date (section 4(5) of the Act).

A landlord may request an order of possession when a tenant has not disputed the Notice and the time for making an application to dispute the Notice has expired (section 55(2)(b) of the Act). In such circumstances, an arbitrator may grant the landlord an order of possession and an order requiring payment of the unpaid rent (section 55(4) of the Act).

In this dispute, the landlord issued the Notice for the tenant's failure to pay rent. The tenant failed to pay the amount of \$6,900.00 and failed to dispute the Notice within five days of being served with the Notice. It should also be noted that, having reviewed the Notice, it complies with section 52 of the Act in form and content.

As such, it is my finding on a balance of probabilities that the tenant is conclusively presumed to have accepted the Notice and that they were required to vacate by the effective date of October 19, 2021. (The landlord is fairly certain that the tenant has abandoned the property, however.)

Given the above, the landlord is entitled to an order of possession and an order requiring payment of unpaid rent in the amount of \$6,900.00.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in his application, I award him \$100.00 to cover the cost of the filing fee. Thus, the landlord is awarded a total of \$7,000.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As the tenancy is now ended, the landlord is authorized to retain the tenant's security deposit of \$1,200.00 in partial satisfaction of the amount awarded.

A monetary order in the amount of \$5,800.00 is issued in conjunction with this decision to the landlord. If the tenant fails to pay the amount owing within 15 days of receiving this decision, then the landlord must serve a copy of the monetary order on the tenant. The landlord may then file and enforce the monetary order in the Provincial Court of British Columbia.

Though the tenant appears to have abandoned the rental unit, the landlord is nevertheless granted an order of possession should it be necessary for him to ensure vacant possession of the rental unit. A copy of the order of possession is issued in conjunction with this decision to the landlord.

Conclusion

The application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 10, 2022

Residential Tenancy Branch