



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 659804 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the “Act”), and deals with an Application for Dispute Resolution by the Landlord for:

1. An Order of Possession – Section 55;
2. A Monetary Order for unpaid rent – Section 67; and
3. Recovery of the filing fee – Section 72.

Given the Landlord's signed proof of service, I find that the Landlord served the Tenant personally with the Notice of Direct Request Proceeding on May 8, 2014 in accordance with the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

In the Application made May 6, 2014 the Landlord submits that the Tenant has not paid rent owing and the Landlord provides the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding;

- A copy of a residential tenancy agreement signed by the Parties indicating a tenancy start date of November 21, 2013 and a monthly rent of \$975.00 due on the “welfare” day of the month;
- A copy of a 10 day notice to end tenancy for unpaid rent (the “Notice”) issued on April 25, 2014 with a stated effective vacancy date of May 5, 2014 for \$375.00 in unpaid rent that was due on April 1, 2014;
- A receipt dated March 24, 2014 for \$975.00 with notations that cannot be discerned; and
- A proof of service of the Notice showing that the Landlord served the Notice to the Tenant in person on April 25, 2014.

The Tenant did not make an application to dispute the Notice.

Analysis

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. This section contemplates the provision of a valid notice to end tenancy. As the tenancy agreement indicates that rent is payable each month on “welfare” day and there is no evidence what day of the month this occurs, I find that the Notice setting out that rent was not paid by the due date of April 1, 2014 to be without basis and therefore not valid. As the Notice is not valid, I dismiss the claim for an order of possession. The service of a new and valid notice will be required should the Landlord wish to seek another order of possession.

As the Landlord provided no accounting of the rental amount paid and being claimed in the application, no indication of when the arrears accrued and considering that the illegible copy of the rent receipt provides no assistance with such a determination, I

dismiss the claim for unpaid rent with leave to reapply. As the Direct Request Process does not allow for the claim to recover the filing fee, I dismiss this claim.

It should be noted that the Direct Request Process contemplates certain required evidence that raises no questions to support the claims made. As this application raised questions that cannot be dealt with in this process, I encourage the Landlord to use the usual application process for similar applications.

Conclusion

The application in relation to the order of possession and filing fee is dismissed without leave to reapply and the application in relation to unpaid rent is dismissed with leave to reapply.

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: May 22, 2014

Residential Tenancy Branch

