



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 11, 2015, the landlord’s agent “MH” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on March 16, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on February 12, 2013, indicating a monthly rent of \$950.00 due on the first day of the month for a tenancy commencing on April 1, 2013;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,170.00 for outstanding rent owing for February 2015;
- An undated document on which the landlord provides a calculation with respect to the rent and other fees owed for February 2015;
- The landlord established the manner in which rent was raised from the initial \$950.00 stated in the tenancy agreement to the current amount of \$970.00 by providing a copy of a "Notice of Rent Increase" form, dated May 22, 2014, provided to the tenant during the course of the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 19, 2015, which the landlord states was served to the tenant on February 19, 2015, for \$1,270.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of March 1, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent MH served the Notice to the tenant by way of posting it to the door of the rental unit at 2:30 pm on February 19, 2015. The Proof of Service establishes that the service was witnessed by "DC" and a signature for DC is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on February 22, 2015, three days after its posting.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's monetary order worksheet and the amount indicated on the Notice issued to the tenant. The sum of the rent owed and partial payments received, as indicated on the monetary worksheet, results in an outstanding balance owed in the amount of \$1,170.00, which relies on the inclusion of fees other than rent which are not permitted to be included within the Direct Request process. In calculating the sum of \$1,170.00,

the landlord's agent includes a \$25.00 NSF fee and a \$25.00 late fee, as well as a further separate \$100.00 fee identified as arising from, as the landlord's agent states, "for late fees and NSF", which are categorized as separate from the previously stated NSF and late fee. The balance owed in the amount of \$1,170.00 relies on the inclusion of rent owed in the amount of \$970.00 for February 2015 and these other fees.

However, the Notice issued to the tenant on February 19, 2015 is in the amount of \$1,270.00 for rent due by February 1, 2015, which is comprised of rent owed in the amount of \$970.00, a parking fee of \$50.00, an NSF fee of \$25.00, a late fee of \$25.00 and a balance owing of \$200.00. The landlord does not clarify where the balance of \$200.00 arises from and does not account for the nature of the \$200.00 balance and does not indicate whether it is comprised of outstanding rent or other fees.

Within the purview of the Direct Request process, I cannot consider the portion of the landlord's application for a monetary claim arising from an amount associated with fees separate and apart from rent or utilities owed under the tenancy. For this reason, I dismiss the portion of the landlord's monetary claim arising from the balance of outstanding fees owed with respect to this tenancy. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the amount of rent owing listed on the Notice issued to the tenant, in the amount of \$970.00, for the month of February 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$970.00, as the landlord has established that the monthly rent amount was raised in an appropriate manner from the initial amount of \$950.00, as established in the tenancy agreement, to the current amount of \$970.00. I accept the evidence before me that the tenant has failed to pay \$970.00 in rent for the month of February 2015. I find that the tenant received the Notice on February 22, 2015. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that 5-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, March 4, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$970.00 for unpaid rent owing for February 2015, as of March 11, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$970.00 for unpaid rent owing for February 2015, as of March 11, 2015. The landlord is provided with these Orders in the above terms and the tenant

must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: March 19, 2015

Residential Tenancy Branch

