



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EVERGREEN LANDS LTD.
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 April 20, 2015, the landlord's agent 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 April 25, 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 November 10, 2014, indicating a monthly rent of \$1,200.00 due on the first day of the month for a tenancy commencing on November 15, 2014;

- A Monetary Order Worksheet showing the amount of utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$279.91 for outstanding utilities owing as of February 27, 2015;
- A copy of an invoice, dated February 27, 2015, addressed to the tenant, in which the landlord asks that the tenant pay an unpaid gas bill in the amount of \$279.91 by March 31, 2015;
- A copy of a gas bill, which demonstrates that the tenant owes a portion of \$73.12, and a copy of a second gas bill which shows that the tenant owes \$206.79.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated April 7, 2015, which the landlord states was served to the tenant on April 7, 2015, for \$279.91 in unpaid utilities due on February 27, 2015, with a stated effective vacancy date of April 24, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of registered mail on April 7, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on April 12, 2015, five days after its registered mailing.

Subsection 46(6) of the *Act*, provides, in part, the following:

If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the tenancy agreement included a term which demonstrates that the tenant was to bear the cost of all utilities. The landlord provided a written demand letter to the tenant for payment of the outstanding utility bills, and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid utility (gas bill) as unpaid rent in accordance with subsection 46(6) of the *Act*.

I accept the evidence before me that the tenant has failed to pay the sum of the outstanding utilities owed in the amount of \$279.91. I find that the tenant received the Notice on April 12, 2015. I accept the landlords' undisputed evidence and find that the tenant did not pay the utilities 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 effective date of the Notice, April 24, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$279.91 for unpaid utilities owed as of February 27, 2015.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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 landlords are entitled to a monetary Order in the amount of \$279.91 for unpaid utilities owed as of February 27, 2015. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: April 27, 2015

Residential Tenancy Branch

