



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 27, 2015, at 1:23 pm, the landlord’s agent “KW” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “RA” and a signature for RA is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 27, 2015.

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 July 27, 2012, indicating a monthly rent of \$635.00 due on the first day of the month;
- The landlord established the manner in which the rent was raised from the initial \$635.00 stated in the tenancy agreement to the amount of \$645.00 by providing a copy of a "Notice of Rent Increase" form, dated July 15, 2014, provided to the tenant during the course of the tenancy;
- 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 \$1,384.00 for outstanding rent, comprised of \$662.00 owed each month for each of February 2015 and March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 13, 2015, which the landlord states was served to the tenant on March 13, 2015, for \$1,384.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 26, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent KW served the Notice to the tenant by way of posting it to the door of the rental unit on March 13, 2015. The Proof of Service form establishes that the service was witnessed by "RA" and a signature for RA 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 March 16, 2015, three days after its posting.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an ex parte Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The landlords have provided only one copy of a Notice of Rent Increase form, dated July 15, 2014, which demonstrates that the monthly rent was increased to \$645.00. There is not any other evidentiary material before me to suggest that the tenant was to pay monthly rent in an amount greater than \$645.00. On the monetary worksheet, the landlord has established a monetary claim in the amount of \$1,384.00, however, the landlord has not demonstrated how the amount of \$1,384.00 was calculated. The landlord indicates that an amount of \$662.00 is owed for each of February 2015 and March 2015, the sum of which results in a balance of \$1,324.00, which is a difference of \$60.00 when compared against the amount sought on the monetary worksheet in the amount of \$1,384.00. The landlord has not provided an explanation for the difference of \$60.00.

The tenancy agreement establishes that the tenant is to pay an additional monthly fee of \$12.00 for parking and a \$5.00 monthly fee for laundry. Both fees are listed as being separate and apart from the monthly rent amount. However, reimbursement for fees such as the filing fee, parking fees, and other fees, cannot be sought by way of the Direct Request process. Therefore, I will address only the portion of the landlord's monetary claim which arises from unpaid rent. Based on the evidence before me, the landlord has not demonstrated how the amount claimed, \$1,384.00, was calculated. The evidence provided demonstrates that after the "Notice of Rent Increase" form, dated July 15, 2014 was provided to the tenant, the monthly rent was raised to \$645.00. Therefore, I will consider the landlord's application based on unpaid rent owed in the amount of \$645.00 for each of February 2015 and March 2015, which results in a sum of \$1,290.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$645.00, and accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$1,290.00, comprised of the balance of rent owed for the months of February 2015 and March 2015. I find that the tenant received the Notice on March 16, 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 effective date of the Notice, March 26, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,290.00 for unpaid rent owing for February 2015 and March 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 \$1,290.00 for unpaid rent owing for February 2015 and March 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: April 22, 2015

Residential Tenancy Branch

