



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT 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 27, 2015, the landlord's agent "VL" 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 May 2, 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 October 15, 2012, indicating a monthly rent of \$1,400.00

due on the first day of the month for a tenancy commencing on November 1, 2012. The tenancy agreement includes a term which demonstrates that the tenant is responsible for payment of 60% of the gas bill and 60% of the hydro bill;

- A letter from the landlord, dated March 3, 2015, addressed to the tenant, in which the landlord asks that the tenant pay her portion of utilities owed in the amount of \$727.93 by April 3, 2015;
- A Monetary Order Worksheet showing the utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$527.93, comprised of the tenant's portion of a gas bill owed in the amount of \$152.68 and a hydro bill owed in the amount of \$375.25;
- Copies of hydro and gas bills on which the landlord demonstrates the amount of the bills owed by the tenant;
- A copy of a receipt which demonstrates that a partial payment of \$200.00 was provided by the tenant on April 24, 2015, and was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a rental ledger titled "Tenant Ledger" which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated April 9, 2015, which the landlord states was served to the tenant on April 9, 2015, for \$727.93 in unpaid utilities due on March 3, 2015, with a stated effective vacancy date of April 19, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "SJ" served the Notice to the tenant by way of posting it to the door of the rental unit on April 9, 2015. The Proof of Service form establishes that the service was witnessed by "VL" and a signature for VL 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 April 12, 2015, three days after its posting.

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 establishes that the tenant is responsible for payment of 60% of the gas bill and 60% of the hydro bill. The landlord provided a written demand letter to the tenant for payment of outstanding utilities and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid utilities as unpaid rent in accordance with subsection 46(6) of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,400.00, as established in the tenancy agreement, and further find that the tenant was responsible for payment of 60% of the amount of the gas bill, and 60% of the amount of the hydro bill. I accept the evidence before me that the tenant has failed to pay sum of the outstanding gas and hydro utilities owed in the amount of \$527.93. 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 corrected effective date of the Notice, April 22, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$527.93 for unpaid utilities owed as of April 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 landlord is entitled to a monetary Order in the amount of \$527.93 for unpaid utilities owed as of April 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: May 4, 2015

Residential Tenancy Branch

