



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES 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 utilities and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 13, 2015, the landlord’s agent “KN” 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 18, 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 and utilities 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 January 23, 2015, indicating a monthly rent of \$800.00 due on the first day of the month for a tenancy commencing on February 1, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,210.00. The landlord indicates that there is unpaid rent in the amount of \$1,190.00 which is comprised of the balance of unpaid rent owed for the period of March 2015 to May 2015. The landlord also seeks to pursue a monetary claim in the amount of \$8.98 for outstanding utilities which the landlord indicates is for the amount of the hydro bill owed by the tenant;
- 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 May 4, 2015, which the landlord states was served to the tenant on May 4, 2015, for \$1,190.00 in unpaid rent due on May 1, 2015, and \$8.98 in unpaid utilities due on March 1, 2015 with a stated effective vacancy date of May 17, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "LC" served the Notice to the tenant by way of posting it to the door of the rental unit at 10:30 am on May 4, 2015. The Proof of Service form establishes that the service was witnessed by "JM" and a signature for JM 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 May 7, 2015, three days after its posting.

As part of the application for a monetary Order, the landlord establishes a monetary claim in the amount of \$8.98 for unpaid utilities arising from the amount owed by the tenant with respect to the hydro bill. Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) 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 landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to. The landlord has not provided a copy of a written demand served to the tenant to direct the tenant to pay the outstanding amount owed for the portion of the utilities for which the tenant is responsible to pay under the agreement. Before issuing a Notice to a tenant with respect to unpaid utilities, a landlord must give the tenant a written demand for payment of the unpaid utilities. I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of \$800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$1,190.00, comprised of the balance of rent owed for the period of March 2015 to May 2015. I find that the tenant received the Notice on May 7, 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, May 17, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,190.00 for unpaid rent owing for the period of March 2015 to May 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 \$1,190.00 for unpaid rent owing for the period of March 2015 to May

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: May 19, 2015

Residential Tenancy Branch

