



Dispute Resolution Services

Page: 1

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 a Monetary Order and an Order of Possession based on unpaid rent and utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 14, 2015, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord provided witnessed documentary evidence to confirm this 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 served with the Direct Request Proceeding documents on July 14, 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 on February 28, 2015 and the tenant on March 6, 2015, indicating a monthly rent of \$1,100.00, due on the first day of the month, for a tenancy commencing on March 1, 2015. The tenancy agreement also indicates that the tenant is responsible for 1/3 of the monthly utilities;
- A Monetary Order Worksheet showing the rent and utilities owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated June 3, 2015, and posted to the tenant's door on July 3, 2015, with a stated effective vacancy date of July 12, 2015, for \$1,100.00 in unpaid rent and \$133.13 in unpaid utilities.
- A letter from the landlord indicating the 10 Day Notice should be dated July 3, 2015 and not June 3, 2015 as this was a minor error on the landlord's part.
- A copy of a demand letter from the landlord to the tenant, dated June 1, 2015, requesting payment of utilities for the month of May in the amount of \$118.31;
- A copy of a demand letter from the landlord to the tenant, dated June 16, 2015, requesting payment of utilities for the month of May in the amount of \$118.31
- A copy of a demand letter from the landlord to the tenant, dated June 26, 2015, requesting payment of utilities for the month of May in the amount of \$45.31 and for the month of June in the amount of \$87.82;
- Two copies of utility bills from Fortis for the rental unit dated May 22, 2015 for \$73.46 and June 22, 2015 for \$51.89;
- A copy of a utility bill from the City of Port Coquitlam for the rental unit dated February 10, 2015 for \$733.00; and
- A copy of a utility bill from BC Hydro for the rental unit dated June 25, 2015 for \$149.10

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 2:30 (a.m. or p.m. not indicated) on July 3, 2015. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 6, 2015, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

I find that the tenant was obligated to pay 1/3 of the monthly utilities as per the tenancy agreement.

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 that such evidentiary material 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.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the amount of utilities owed on the 10 Day Notice exceeds the amount shown on the written demand letters in the landlord's evidence submissions.

The multiple demand letters and differing amounts lend sufficient ambiguity to the landlord's claim that I am unable to grant a Monetary Order for unpaid utilities. I dismiss the landlord's application for unpaid utilities with leave to reapply.

However, I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day 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 date of the 10 Day Notice, July 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$1,100.00, the amount claimed by the landlord, for unpaid rent owing for July 2015 as of July 14, 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 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 \$1,100.00 for rent owed for July 2015. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: July 16, 2015

Residential Tenancy Branch

