



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 September 29, 2015, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 October 04, 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 a landlord, who is not the applicant, and the tenant on November 15, 2013, indicating a monthly rent of \$1,025.00, due on the first day of the month for a tenancy commencing on December 01, 2015;
- A copy of a letter showing the transfer of management responsibilities from the former landlord, who is named on the residential tenancy agreement, to the current landlord who is applying for dispute resolution;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,025.00 to the current monthly rent amount of \$1,050.00;
- A copy of a tenant ledger showing the rent owing and paid during this tenancy;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$500.00 of the \$1,675.00 identified as owing in the 10 Day Notice was paid on September 09, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 09, 2015, and posted to the tenant's door on September 09, 2015, with a stated effective vacancy date of September 19, 2015, for \$1,675.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 11:00 a.m. on September 09, 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 September 12, 2015, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,050.00, as per the tenancy agreement and the Notice of Rent Increase form.

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 will end on the corrected effective date of the 10 Day Notice, September 22, 2015.

I note that the only monetary award available to a landlord by way of the direct request process is for unpaid rent and unpaid utilities. If the landlord has also sought a monetary award for matters relating to late fees, I would not be able to consider this aspect of the landlord's claim through the direct request process.

I find that I am not able to determine what portion of the monetary Order, that the landlord is requesting, consists of late fees. I find that the Monetary Order Worksheet is incomplete and that the tenant ledger does not clearly distinguish between late fees and rent. For this reason, the monetary portion of the landlord's application is dismissed, with leave to reapply

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of September 29, 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.

I dismiss the monetary portion of the landlord's application, with leave to reapply.

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: October 05, 2015

Residential Tenancy Branch

