



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 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 October 14, 2015, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that the tenant has been duly served with the Direct Request Proceeding documents on October 14, 2015, the day it was personally served to them.

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 and the tenant on April 02, 2015, indicating a monthly rent of \$895.00, due on the last day of the month for a tenancy commencing on May 01, 2015;
- A copy of a demand letter, from the landlord to the tenant, dated September 01, 2015, requesting payment of utilities in the amount of \$59.72;

- Two copies of utility bills, one from Fortis for the rental unit dated August 31, 2015 which notes the tenant's portion owing is \$18.03 and one from BC Hydro, dated August 31, 2015, which notes the tenant's portion owing is \$41.69, totaling \$59.72 owing for utilities;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 01, 2015, and posted to the tenant's door on October 01, 2015, with a stated effective vacancy date of October 10, 2015, for \$895.00 in unpaid rent and \$59.72 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 8:30 p.m. on October 01, 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 October 04, 2015, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$895.00 and half of the utilities, as per the tenancy agreement.

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 effective date of the 10 Day Notice, October 14, 2015.

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 date of the demand letter is less than 30 days from the time that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$895.00, the amount of rent claimed by the landlord, for unpaid rent owing for October 2015 as of October 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(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 \$895.00 for rent owed for October 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.

I dismiss the monetary portion of the landlord's application requesting payment of utilities, 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 16, 2015

Residential Tenancy Branch

