



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 December 07, 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 December 07, 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 tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 17, 2015, indicating a monthly rent of \$750.00, due on the first day of the month for a tenancy commencing on July 17, 2015;

- Three copies of emails, from the landlord to the tenant, demanding payment of utilities, dated October 16, 2015, October 26, 2015, and November 08, 2015;
- A copy of a demand letter from the landlord to the tenant, updated December 01, 2015, demanding payment of utilities in the amount of \$471.10;
- A copy of an Agreement of Lease Termination letter, dated November 17, 2015, in which the tenant agrees to pay the utilities and rent owed by November 25, 2015;
- Two copies of utility bills, one from BC Hydro and one from Fortis;
- 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 November 25, 2015, and personally handed to the tenant on November 25, 2015, for \$471.10 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 6:00 p.m. on November 25, 2015. The 10 Day Notice states that the tenants 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

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 there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent. Although the landlord sent the tenant three e-mails demanding payment of utilities, the *Act* does not recognize e-mails as written demand.

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 Agreement of Lease Termination letter, date November 17, 2015, and the demand letter, updated December 1, 2015 are 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 dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice of November 25, 2015, without leave to reapply. The 10 Day Notice of November 25, 2015 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, I dismiss the landlord's application for a monetary Order with leave to reapply.

I note that, even if proper demand letters were given to the tenant and 30 days had passed, the tenancy agreement does not clearly indicate the portion of the utilities that the tenant is required to pay. For the above reason this application would not be suitable for a Direct Request as I am not able to clarify facts in an ex parte proceeding and would have had to have adjourned to a participatory hearing.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice of November 25, 2015 is dismissed, without leave to reapply.

The 10 Day Notice of November 25, 2015, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a monetary Order 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: December 08, 2015

Residential Tenancy Branch

