



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 10, 2016, at 6:00 PM, the landlord “FB” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “AB” and a signature for “AB” is included on the form.

Based on the written submissions of the landlords, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on February 10, 2016.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 landlords and the tenant on September 09, 2015, indicating a monthly rent of \$1,100.00

due on the first day of the month for a tenancy commencing on September 01, 2015;

- A Monetary Order Worksheet showing the unpaid rent and utilities owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$1,159.21, comprised of outstanding rent owing in the amount of \$1,100.00 for February 2016 and outstanding utilities owing in the amount of \$59.21 for the tenant's portion of a water bill;
- Copies of letters from the landlord, dated January 28, 2016 and February 08, 2016;
- Copies of email correspondence between the landlords and the tenant;
- A letter dated February 02, 2016, from the landlord "AB" addressed to the tenant, in which the tenant is asked to pay her portion of a water bill in the amount of \$59.21;
- A copy of a 1 Month Notice to End Tenancy, dated January 28, 2016;
- A copy of a January 21, 2016 letter from the landlords to the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated February 02, 2016, which the landlords state was served to the tenant on February 02, 2016, for \$1,100.00 in unpaid rent due on February 01, 2016 and \$59.21 in unpaid utilities due on February 02, 2016, with a stated effective vacancy date of February 13, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord "FB" served the Notice to the tenant by way of personal service via hand-delivery at 2:00 PM, on February 02, 2016. The Proof of Service form establishes that the service was witnessed by "AB" and a signature for "AB" 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 landlords alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on February 02, 2016.

As part of the application for a monetary Order, the landlords indicate on the monetary order worksheet that they seek \$59.21 for an unpaid utility amount arising from the

amount owed by the tenant for her portion of a water 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 evidentiary material before me includes a copy of a tenancy agreement, including an addendum to the tenancy agreement, neither of which demonstrate that the tenant is expected to pay a utility charge with respect to a portion of a water bill arising from water usage. The landlords have not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to by demonstrating that the tenancy agreement included a term with respect to the tenant agreeing to pay a utility charge for water usage.

I find that as the landlords have 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 landlords' application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlords' request for a monetary Order to the unpaid rent claimed as owing to the landlords.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,100.00, 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 \$1,100.00, comprised of the balance of unpaid rent owed for the month of February 2016. I find that the tenant received the Notice on February 02, 2016. I accept the landlords' undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-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, February 13, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,100.00 for unpaid rent owing for February 2016, as of February 08, 2016.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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 landlords are entitled to a monetary Order in the amount of \$1,100.00 for unpaid rent owing for February 2016. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: February 16, 2016

Residential Tenancy Branch

