



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 February 11, 2016, the landlord’s agent “LP” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service form also establishes that the service was witnessed by the landlord “SM” and a signature for “SM” is included on the form.

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 February 16, 2016, 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 the landlord and the tenant on November 02, 2015, indicating a monthly rent of \$1,500.00 due on the first day of the month for a tenancy commencing on November 15, 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 \$1,690.54, comprised of unpaid rent owing in the amount of \$1,500.00 for January 2016 and outstanding utilities owing in the amount of \$190.54 for unpaid hydro utility which the landlord claims is owed by the tenant;
- A copy of a letter, dated January 27, 2016, addressed to the tenant, in which the landlord requests that the tenant provide payment for the portion of the hydro bill, in the amount of \$190.54, owed by the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) dated January 27, 2016, which the landlords state was served to the tenant on January 27, 2016, for \$1,500.00 in unpaid rent due on January 01, 2016 and \$190.54 in unpaid utilities due on January 27, 2016, with a stated effective vacancy date of February 06, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 4:00 PM on January 27, 2016. The Proof of Service form establishes that the service was witnessed by "LP" and a signature for "LP" 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 landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on January 30, 2016, three days after its posting.

As part of the application for a monetary Order, the landlord indicates on the monetary order worksheet that he seeks \$190.54 for an unpaid utility amount arising from the amount owed by the tenant for a portion of a hydro 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 which does not demonstrate that the tenant is expected to pay a utility charge with respect to a portion of the hydro utility. The tenancy agreement, on the second page, leaves blank the box labelled “electricity” under the section that establishes the services included in the rent. However, there is no provision in the tenancy agreement that demonstrates that the tenant is expected to pay a portion of the hydro utility, nor is there an addendum to the agreement which includes an item that establishes that the tenant is expected to pay a portion of the hydro utility.

The landlord provided a copy of a letter, dated January 27, 2016, addressed to the tenant, in which the landlord requests that the tenant provide payment for the portion of the hydro bill, in the amount of \$190.54, owed by the tenant. Even if the landlord's letter is to be interpreted as establishing that the parties agreed that the tenant is expected to pay a portion of the hydro utility, if a tenant is provided a written demand to provide payment of a utility charge for which he is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. As the landlord issued a Notice for unpaid utilities on January 27, 2016, I find that the landlord has not waited more than 30 days from the date of the written demand to the tenant, and has, therefore, issued the Notice to the tenant on a date earlier than permitted under the *Act*.

The landlord has 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 portion of the hydro utility. I find that as the landlord has 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 landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,500.00, 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 \$1,500.00, comprised of the balance of unpaid rent owed for the month of January 2016. I find that the tenant received the Notice on January 30, 2016. I accept the landlord's 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 corrected effective date of the Notice, February 09, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,500.00, comprised of the balance of unpaid rent owed for the month of January 2016.

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 \$1,500.00, comprised of the balance of unpaid rent owed for the month of January 2016. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 17, 2016

Residential Tenancy Branch

