



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 May 19, 2016, at 6:30 PM, the landlord "PF" 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 "MF" and a signature for "MF" 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 May 19, 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 November 26, 2015, indicating a monthly rent of \$1,575.00 due on the first day of the month for a tenancy commencing on November 29, 2015;
- A Monetary Order Worksheet showing the rent and utilities owing during the portion of this tenancy in question, on which the landlords establish a monetary

claim in the amount of \$3,103.86, comprised of the balance of unpaid rent owed in the amount of \$1,575.00 for May 2016, and unpaid utilities owed in the amount of \$1,528.86, as of April 08, 2016;

- A copy of a May 08, 2016 demand letter from the landlords to the tenant, in which the landlords provide the tenant a written demand to provide payment of the outstanding utility charges owed by the tenant in the amount of \$1,528.86;
- A copy of an April 01, 2016 letter from the municipality in which the rental unit is located;
- A copy of a March 31, 2016 utility bill;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 09, 2016, which the landlords state was served to the tenant on May 09, 2016, for \$1,575.00 in unpaid rent due on May 01, 2016, with a stated effective vacancy date of May 19, 2016. The Notice also indicates that there is an amount outstanding of \$1,528.86 for unpaid utility charges which were due by April 08, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord "PF" served the Notice to the tenant by way of posting it to the door of the rental unit at 1:00 PM on May 09, 2016. The Proof of Service establishes that the service was witnessed by "MF" and a signature for "MF" 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 provided by the landlord(s). 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 May 12, 2016, three days after its posting.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Subsection 46(6) of the *Act*, reads in part as follows:

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.

The landlords provided a copy of a May 08, 2016 demand letter, in which the landlords provide the tenant a written demand to provide payment of the outstanding utility charges owed by the tenant in the amount of \$1,528.86. 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 landlords issued a Notice for unpaid utilities on May 09, 2016, I find that the landlords have not waited more than 30 days from the date of the written demand, in the form of a May 08, 2016 letter to the tenant, and have, therefore, issued the Notice for unpaid utilities to the tenant on a date earlier than permitted under the *Act*.

I therefore find that, with respect to unpaid utilities, the May 09, 2016 Notice was not properly served in accordance with the *Act*, and it was not open to the landlords to treat the unpaid utility charges as unpaid rent as of May 09, 2016, the date on which the Notice was issued to the tenant. I further find that it is not open for the landlords to seek reimbursement of the unpaid utilities 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 \$1,575.00, 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 \$1,575.00, comprised of the balance of unpaid rent owed for the month of May 2016. I find that the tenant

received the Notice on May 12, 2016. I accept the landlords' undisputed evidence and find that the tenant did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, May 22, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,575.00, comprised of the balance of unpaid rent owed for the month of May 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.

I dismiss that portion of the landlords' application for a monetary Order that deals with unpaid utilities with leave to reapply.

Pursuant to section 67 of the *Act*, I find that the landlords are entitled to a monetary Order in the amount of \$1,575.00 for unpaid rent. 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: May 24, 2016

Residential Tenancy Branch