



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 October 13, 2016, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 October 18, 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 August 10, 2011, indicating a monthly rent in the amount of \$550.00, due on the first day of the month for a tenancy commencing on August 15, 2011;

- Two copies of Notice of Rent Increase forms showing the rent being increased from \$550.00 to the current monthly rent amount of \$620.00;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$350.00 of the \$670.00 identified as owing in the 10 Day Notice was paid on August 08, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 28, 2016, and posted to the tenant's door on July 28, 2016, with a stated effective vacancy date of August 07, 2016, for \$670.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 5:00 p.m. on July 28, 2016. 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

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 July 31, 2016, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$620.00, as per the tenancy agreement and the Notice of Rent Increase forms.

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, August 10, 2016.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. The most current Notice of Rent Increase form must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent

In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's

application for rent owed for August 2016 and September 2016. For this reason the monetary portion of the landlord's application, for unpaid rent owing from August 2016 and September 2016, is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$270.00 ($\$620.00 - \$350.00 = \270.00), the amount claimed by the landlord, for unpaid rent owing for July 2016 as of October 13, 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 \$270.00 for rent owed for July 2016. 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, for unpaid rent owing for August 2016 and September 2016, 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 20, 2016

Residential Tenancy Branch