



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 16, 2017, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords 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 21, 2017, the fifth day after their registered mailing.

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 June 30, 2016, indicating a monthly rent of \$1,050.00, due on the first day of the month for a tenancy commencing on July 1, 2016;
- Four copies of utility bills from Telus for the rental unit dated September 10, 2016 for \$78.56, October 10, 2016 for \$84.16, November 10, 2016 for \$96.94, and January 10, 2016 for \$37.02 totaling \$296.68;
- Four copies of utility bills from Fortis BC for the rental unit dated September 29, 2016 for \$33.83, October 31, 2016 for \$61.15, November 30, 2016 for \$72.13, and January 3, 2017 for \$141.02 totaling \$308.13;
- Three copies of utility bills from BC Hydro for the rental unit dated September 29, 2016 for \$70.90, November 30, 2016 for \$157.72, and January 31, 2017 for \$190.97 totaling \$419.59;
- A copy of a demand letter e-mail from the landlord to the tenant, dated January 25, 2017, requesting payment of utilities in the amount of \$379.69;
- A copy of a second demand letter e-mail from the landlord to the tenant, dated February 1, 2017, requesting payment of utilities in the amount of \$475.17;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 4, 2017, and personally served to the tenant on February 4, 2017, with a stated effective vacancy date of February 14, 2017, for \$1,050.00 in unpaid rent and \$475.17 in unpaid utilities.

Documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenant at 2:00 pm on February 4, 2017. The landlords had the tenant sign the Proof of Service Notice to End Tenancy to confirm personal service. The 10 Day Notice states that the tenant 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on February 4, 2017.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,050.00, as per the tenancy agreement.

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 effective date of the 10 Day Notice, February 14, 2017.

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 dates of the demand letters are less than 30 days from the time that the 10 Day Notice was issued to the tenant and that not enough time has passed to allow the landlords to treat the unpaid utilities as unpaid rent. For this reason the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,050.00, the amount claimed by the landlords, for unpaid rent owing for February 2017 as of February 14, 2017.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant 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 \$1,050.00 for rent owed for February 2017. The landlords are 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 portion of the landlords' monetary claim for unpaid utilities 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: February 23, 2017

Residential Tenancy Branch