



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 March 09, 2017, 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 March 14, 2017, 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 tenants;
- A copy of a residential tenancy agreement which was signed by the landlord on February 16, 2016, and the tenant on March 16, 2016, indicating a monthly rent in the amount of \$2,500.00, due on the third day of the month for a tenancy commencing on March 01, 2016;

- A copy of a demand letter, from the landlord to the tenant, dated January 13, 2017, requesting payment of utilities in the amount of \$59.23;
- A copy of a utility bill from Fortis, for the rental unit, dated December 13, 2016 for \$59.23;
- A copy of a demand letter, from the landlord to the tenant, dated February 07, 2017, requesting payment of utilities in the amount of \$120.71;
- A copy of a utility bill from Fortis, for the rental unit, dated January 13, 2017 for \$120.71;
- A copy of a demand letter from the landlord to the tenant, dated February 10, 2017, requesting payment of BC Hydro utilities in the amount of \$638.78 and Fortis utilities in the amount of \$179.94;
- A copy of a utility bill from BC Hydro, for the rental unit, dated February 10, 2017 for \$638.78;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 15, 2017, and personally handed to the tenant on February 15, 2017, with a stated effective vacancy date of February 27, 2017, for \$2,500.00 in unpaid rent and \$818.22 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 3:00 p.m. on February 15, 2017. 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on February 15, 2017.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,500.00 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 27, 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, dated February 07, 2017, and February 10, 2017, are less than 30 days from the time that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent for the amounts associated with these two demand letters. For this reason the monetary portion of the landlord's application, concerning unpaid utilities associated with the demand letters of February 07, 2017, and February 10, 2017 are 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 \$2,559.23, for unpaid rent owing for February 2017, and unpaid utilities owing for January 13, 2017, as of March 02, 2017.

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 \$2,559.23 for rent owed for February 2017 and unpaid utilities owing for January 13, 2017. 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, concerning unpaid utilities owing for February 07, 2017, and February 10, 2017, 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: March 15, 2017

Residential Tenancy Branch

