



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COTTYN CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

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 23, 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 28, 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 tenant;

- A copy of a residential tenancy agreement which was signed by the landlord on October 30, 2016 and the tenant on October 31, 2016, indicating a monthly rent of \$1,150.00, due on the first day of the month for a tenancy commencing on October 31, 2016;
- A copy of a hand-written invoice, dated February 7, 2017, indicating \$33.72 in utilities owing;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- The Monetary Order Worksheet noted that \$670.00 of the \$800.00 identified as owing in the 10 Day Notice was paid on March 17, 2017; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 7, 2017, and posted to the tenant's door on March 7, 2017, with a stated effective vacancy date of March 20, 2017, for \$800.00 in unpaid rent and \$33.72 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 7:27 (a.m. or p.m. not indicated) on March 7, 2017. 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 10, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00, 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, March 20, 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. The written demand should include a copy of the utility bill. I find that there is no written demand or copy of the utility bill in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent. For this reason the monetary portion of the landlord's application concerning unpaid utilities 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 \$130.00, the amount claimed by the landlord, for unpaid rent owing for March 2017 as of March 20, 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 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 \$130.00 for rent owed for March 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 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 29, 2017

Residential Tenancy Branch