



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENTICTON AND DISTRICT SOCIETY FOR COMMUNITY LIVING
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 17, 2017, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord 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 March 17, 2017.

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 December 6, 2016, indicating a monthly rent of \$462.00, due on the first day of the month for a tenancy commencing on December 1, 2016;
- A Monetary Order Worksheet showing the utilities owing and paid during the relevant portion of this tenancy;
- A copy of a demand letter from the landlord to the tenant, dated January 18, 2017, requesting payment of utilities in the amount of \$416.10;
- Three copies of utility bills from Fortis for the rental unit dated November 14, 2016 for \$29.10, December 12, 2016 for \$31.99, and January 13, 2017 for \$70.83 totaling \$131.92;
- Three copies of utility bills from the City of Penticton for the rental unit dated November 15, 2016 for \$89.88, December 15, 2016 for \$94.09, and January 13, 2017 for \$100.21 totaling \$284.18;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 17, 2017, for \$416.10 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 3:38 pm 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.

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 that such evidentiary material 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.

I note that the landlord submitted copies of utility bills from November 2016, yet the tenancy agreement establishes that the tenancy began on December 1, 2016. I find that this discrepancy raises questions that cannot be answered within the purview of the Direct Request process. For this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

However, I accept the evidence before me that the tenant has failed to pay the utilities 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, March 20, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid utilities owing as of March 16, 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.

I dismiss the landlord's application for a Monetary Order 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 21, 2017

Residential Tenancy Branch