



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENT 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 May 10, 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 May 15, 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 and the tenant on February 27, 2016, indicating a monthly rent of \$1,012.00, due on the last day of the month for a tenancy commencing on April 1, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,012.00 to the current monthly rent amount of \$1,049.00;
- 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 May 4, 2017, and personally served to the tenant on May 4, 2017, with a stated effective vacancy date of May 14, 2017, for \$1,050.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 10:30 am on May 4, 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on May 4, 2017.

I note that the address indicated on the 10 Day Notice from which the tenant must move is slightly different than the tenant address on the 10 Day Notice where documents are served, the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlord's application. I have amended this address to match all other information provided for the address as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,049.00, as per the tenancy agreement and the Notice of Rent Increase.

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, May 14, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for May 2017 as of May 10, 2017.

I find that the amount of rent established by the tenancy agreement and the Notice of Rent Increase does not match with the amount of rent being claimed on the 10 Day Notice or the total monetary amount requested by the landlord. For this reason the monetary portion the landlord's application is dismissed, with leave to reapply.

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: May 16, 2017

Residential Tenancy Branch