



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 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 25, 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 submission 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 May 25, 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 February 8, 2017, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on March 1, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- The Monetary Order Worksheet noted that \$600.00 of the \$1,100.00 identified as owing in the 10 Day Notice was paid on May 8, 2017;
- A copy of a receipt dated May 23, 2017, for \$500.00 of rent and \$85.00 of utilities, paid by the tenant, which the landlord has indicated is “for use and occupancy only”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 2, 2017, and personally served to the tenant on May 2, 2017, with a stated effective vacancy date of May 12, 2017, for \$1,100.00 in unpaid rent and \$82.00 in unpaid utilities.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 3:45 pm on May 2, 2017. The landlord 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 May 2, 2017.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00, 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, May 12, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of May 19, 2017.

I have reviewed the documentary evidence and I note that the tenant appears to have paid the rent owing on the 10 Day Notice in full. For this reason, the landlord's application for a Monetary Order is 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 26, 2017

Residential Tenancy Branch