



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on June 6, 2017, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on June 11, 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 Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by a landlord who is not the applicant on July 8, 2016 and the tenants on July 20, 2016, indicating a monthly rent of \$1,250.00, due on the first day of the month for a tenancy commencing on August 1, 2016;
- A copy of a letter showing the transfer of management responsibilities from the former landlord, who is named on the residential tenancy agreement, to the current landlord who is applying for dispute resolution;
- A copy of a utility bill from BC Hydro for the rental unit dated April 12, 2017 for \$153.75;
- Four copies of utility bills from Fortis BC for the rental unit dated February 9, 2017 for \$76.31, March 9, 2017 for \$75.79, April 7, 2017 for \$53.38 and May 9, 2017 for \$39.68 totaling \$245.16;
- A copy of a demand letter from the landlord to the tenants, dated April 21, 2017, requesting payment of utilities in the amount of \$405.55;
- A Monetary Order Worksheet and ledger 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 2, 2017, and posted to the tenants' door on May 2, 2017, with a stated effective vacancy date of May 12, 2017, for \$1,225.00 in unpaid rent and \$405.55 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 3:00 pm on May 2, 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on May 5, 2017, three days after its posting.

I accept the evidence before me that the tenants have 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 tenants are 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, May 15, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of June 5, 2017.

I find that the monthly breakdown of rent and utilities owing on the Monetary Order Worksheet and ledger 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 tenants. Should the tenants 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: June 13, 2017

Residential Tenancy Branch