



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 June 13, 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 June 18, 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 20, 2017, indicating a monthly rent of \$1,550.00, due on the first day of the month for a tenancy commencing on February 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 \$870.00 of the \$870.00 identified as owing in the 10 Day Notice was paid on June 2, 2017;
- A copy of a receipt letter dated June 9, 2017, for \$1,200.00 of rent, paid by the tenant on June 2, 2017, 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 3, 2017, and placed in the tenant’s mailbox on May 4, 2017, with a stated effective vacancy date of May 17, 2017, for \$870.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was placed in the tenant’s mailbox at 10:00 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 sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on May 7, 2017, three days after its being placed in the mailbox.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,550.00, 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 17, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession as of June 12, 2017.

I note that the Monetary Order Worksheet states that the tenant paid the full amount indicated on the 10 Day Notice on June 2, 2017. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlord's application for rent owed for June 2017.

For this reason, the monetary portion of 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: June 19, 2017

Residential Tenancy Branch