



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 16, 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 February 21, 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 tenants;
- A copy of a residential tenancy agreement which was signed by the landlord on August 07, 2016, and the tenant on August 17, 2016, indicating a monthly rent in

the amount of \$500.00, due on the first day of the month for a tenancy commencing on January 01, 2017;

- A copy of an addendum, which was signed by the tenant and a witness, stating that the tenant is to pay 50% of the utilities based on an equal payment plan;
- Seven copies of utility bills from BC Hydro for the rental unit dated October 20, 2016 for \$330.44, November 21, 2016 for \$194.00, December 20, 2016 for \$194.00, January 20, 2017, for \$194.00, March 22, 2017, for \$194.00, April 24, 2017, and May 23, 2017, for \$194.00;
- Four copies of utility bills from Fortis for the rental unit dated October 20, 2016 for \$120.44, November 18, 2016 for \$105.44, December 20, 2016 for \$106.00, January 20, 2017, for \$106.00, March 16, 2017, for \$121.00, March 20, 2017, for \$121.00 and April 19, 2017 for \$121.00;
- A copy of a demand letter from the landlord to the tenant, dated January 30, 2017, requesting payment of utilities in the amount of \$828.50 for the period of September 2016 to January 2017;
- A copy of a demand letter from the landlord to the tenant, dated June 01, 2017, requesting payment of utilities in the amount of \$869.88 for the period of September 2016 to May 2017;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 07, 2017, and posted to the tenant's door on June 07, 2017, with a stated effective vacancy date of June 20, 2017, for \$2,300.00 in unpaid rent and \$869.88 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 1:00 p.m. on June 07, 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 tenant was deemed served with the 10 Day Notice on June 10, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,650.00 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, June 20, 2017.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the demand letter, dated June 01, 2017, is less than 30 days from the time that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities, billed from February 2017 to May 2017, as unpaid rent.

I find that the landlord is claiming the amount of \$350.44 for BC Hydro owed for September 2016 and October 2016. I further find that the BC Hydro Bill for this period shows a balance owing of \$330.44. I find that this discrepancy in the amounts owing raises questions regarding the demand letter, dated January 30, 2017, that can only be addressed in a participatory hearing.

For the reasons listed above, the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$2,300.00, for unpaid rent owing for May 2017 and June 2017, as of June 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(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,300.00 for rent owed for May 2017 and June 2017. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the monetary portion of the landlord's application concerning unpaid, 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 22, 2017

Residential Tenancy Branch