



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 July 7, 2017, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and 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 July 7, 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 June 26, 2016, indicating a monthly rent of \$509.00, due on the first day of the month for a tenancy commencing on August 1, 2016;
- A copy of a Tenant Rent Report letter establishing the tenant's monthly rent contribution at \$574.00 effective from February 1, 2017, until July 31, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a receipt dated June 16, 2017, for \$500.00 of rent, 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 June 8, 2017, and posted to the tenant's door on June 8, 2017, with a stated effective vacancy date of June 30, 2017, for \$943.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 5:00 pm on June 8, 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 June 11, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$574.00, as per the tenancy agreement and the Tenant Rent Report.

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 30, 2017.

Although the tenant has made a partial payment in the amount of \$500.00 on June 16, 2017, the landlord is requesting compensation in the amount of \$943.00. In a Direct

Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$443.00, the amount claimed by the landlord, for unpaid rent owing for April 2017, May 2017, and June 2017 as of July 6, 2017.

The balance of the landlord's application for a Monetary Order 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order in the amount of \$443.00 for rent owed for April 2017, 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 balance of 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: July 10, 2017

Residential Tenancy Branch