



Dispute Resolution Services

Page: 1

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 14, 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 July 19, 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 October 23, 2015, indicating a monthly rent of \$500.00, due on the first day of each month for a tenancy commencing on November 1, 2015;
- A copy of a Notice of Rent Increase form dated November 3, 2016, and posted to the tenant's door on November 4, 2016, showing the rent being increased from \$500.00 to the current monthly rent amount of \$518.00 as of February 1, 2017;
- A Monetary Order Worksheet 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 June 14, 2017, and posted to the tenant's door on June 16, 2017, with a stated effective vacancy date of June 24, 2017, for \$518.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 1:00 pm on June 16, 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 19, 2017, three days after its posting.

I note that the address indicated on the 10 Day Notice from which the tenant must move is slightly different than the tenant address on the 10 Day Notice where documents are served, the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlord's application. I have amended this address to match all other information provided for the address as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

Part 3, section 41 of the *Act* establishes that "a landlord must not increase rent except in accordance with this Part." Part 3, section 42(2) of the *Act* establishes that the landlord "must give a tenant notice of a rent increase at least 3 months before the effective date of the increase."

The landlord has indicated that the Notice of Rent Increase was served to the tenant on November 4, 2016. The Notice of Rent Increase indicates that the rent will be increased

as of February 1, 2017. In order to comply with section 42(2) of the *Act*, I find that the earliest date the increase could have taken effect was March 1, 2017.

I find that this discrepancy raises questions that cannot be answered within the purview of the direct request process. For this reason, I dismiss the landlord's application for a Monetary Order with leave to reapply.

However, 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 corrected effective date of the 10 Day Notice, June 29, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for June 2017 as of July 12, 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 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: July 20, 2017

Residential Tenancy Branch