



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 20, 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 25, 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 a residential tenancy agreement with attached addendum to tenancy agreement which was signed by the landlord and the tenant on March 03, 2017, indicating a monthly rent of \$1,300.00, due on the first day of each month for a tenancy commencing on February 28, 2017;
- A Monetary Order Worksheet showing the rent and utilities owing and paid during the relevant portion of this tenancy;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 07, 2017 with a stated effective vacancy date of July 20, 2017, for \$1,400.00 in unpaid rent and \$214.58 in unpaid utilities; and
- Copies of various text messages purportedly from the landlord to the tenant containing illegible copies of what appears to be a utility bill(s), as well as requests for payment of rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 9:39 a.m. on July 07, 2017. The 10 Day Notice states that the tenant had five days from the date received 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 July 10, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,300.00, 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, July 20, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order for outstanding unpaid **rent** in the amount of \$1,400.00, the amount claimed by the landlord owing for June and July 2017 as of July 19, 2017.

In relation to the landlord's monetary claim for unpaid utilities, Section 46(6) of the *Act* states that if a tenant is required to pay utilities to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give Notice under this section.

In the case before me, I find that while the addendum clarifies the portion of utilities the tenant is required to pay for utilities, there is no indication that the payment is required to be paid to the landlord. In addition, Section 88 of the *Act* sets out the methods by which service of the demand letter may be given. Text or E-mail is not a recognized method of service pursuant to Section 88 of the *Act*.

Based on the foregoing, I am not able to confirm service of the demand letter and utility bill(s) to the tenant, which is a requirement of the Direct Request proceeding, or that the landlord is able to consider unpaid utilities as rent. Accordingly, I dismiss the portion of the landlord's monetary claim relating to unpaid utilities with leave to re-apply through a participatory hearing process.

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 grant the landlord a Monetary Order in the amount of \$1,400.00 for **rent** owed for June and July 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.

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 28, 2017

Residential Tenancy Branch