



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 21, 2017, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords 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 26, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 landlords and the tenant on August 14, 2015, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on September 1, 2015;
- A copy of a second residential tenancy agreement which was signed by the landlords and the tenant on September 1, 2016, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on September 1, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$2,100.00 to the monthly rent amount of \$2,178.00, effective July 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 July 5, 2017, and posted to the tenant's door on July 5, 2017, with a stated effective vacancy date of July 15, 2017, for \$2,178.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenant's door at 3:38 pm on July 5, 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 July 8, 2017, three days after its posting.

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, July 18, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing for July 2017 as of July 19, 2017.

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 (1) of the *Act* establishes that a landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*.

I note that the most recent tenancy agreement signed by the landlords and the tenant began on September 1, 2016. I find that the rent was established under the current tenancy agreement on September 1, 2016 and that the earliest date the landlord could increase the rent was September 1, 2017.

I find that the landlords have requested a rent increase effective on July 1, 2017, which does not provide the 12 months required under section 42(1) of the *Act*.

Part 3, section 43 (1) of the *Act* establishes that the landlord “may impose a rent increase only up to the amount calculated in accordance with the regulations.”

The maximum allowable increase for the year 2017 is 3.7%. I find that 3.7% of \$2,100.00 is \$77.70. On the Notice of Rent Increase form, the landlords have requested an increase in the amount of \$78.00, which is not in accordance with section 43(1) of the *Act* .

As the landlords have not complied with the requirements under Part 3 of the *Act*, I find that I am not able to consider the landlord's request for the increased amount of rent.

Therefore, I find that the landlords are entitled to a Monetary Order in the amount of \$2,100.00, the amount established in the tenancy agreement, for unpaid rent owing for July 2017, as of July 19, 2017.

Conclusion

I grant an Order of Possession to the landlords 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 landlords a Monetary Order in the amount of \$2,100.00 for rent owed for July 2017. The landlords are 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 31, 2017

Residential Tenancy Branch