



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 20, 2017, the landlord's agent 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 25, 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 a residential tenancy agreement which was signed by the landlord and the tenant on May 31, 2012, indicating a monthly rent of \$825.00, due on the first day of each month for a tenancy commencing on June 01, 2012;

- Two copies of Notice of Rent Increase forms showing the rent being increased from \$825.00 to the current monthly rent amount of \$875.00;
- 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 06, 2017 with a stated effective vacancy date of July 16, 2017, for \$875.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenant's door at 10:30 a.m. on July 06, 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 09, 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 19, 2017, pursuant to Section 53 of the *Act*. Therefore, I find that the landlords are entitled to an Order of Possession.

In relation to the Monetary Order, I find on the Application for Dispute Resolution by Direct Request, the landlords establish a request for a monetary order in the amount of \$875.00 which arises from unpaid rent for July 2017.

The monthly rent in the tenancy agreement was established at \$825.00. The landlords have established a new monthly rent amount by way of two Notice of Rent Increase forms. However, it appears that the Notice of Rent Increase form dated September 02, 2014 may increase the rent beyond the amount permitted under the *Act*. The 10 Day Notice that forms the basis of the landlords' Application relies on the current monthly rent amount that has been established as a result of a potentially incorrect amount on

the Notice of Rent Increase form dated September 02, 2014 provided to the tenant. Therefore, while I am satisfied that the Tenant has not paid rent, the documentation in relation to the rent increase amount is insufficient to enable the issuing of a Monetary Order.

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. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

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.

For the above reasons, I dismiss the landlords' claim for a Monetary Order but provide the Landlords leave to re-apply for the outstanding rent through the conventional participatory hearing process.

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