



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 22, 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 22, 2017, the day it was personally served to her.

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 which was signed by the landlord and the tenant on March 02, 2017, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on March 03, 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 “Initial 10 Day Notice”) dated June 21, 2017 with a stated effective vacancy date of July 01, 2017, for **\$2,500.00** in unpaid rent for June 2017.
- A copy of the first page of the 10 Day Notice to End Tenancy for Unpaid Rent (the “Amended 10 Day Notice”) dated June 21, 2017 with a stated effective vacancy date of July 01, 2017, amended to reflect **\$5,000.00** in unpaid rent for June and July 2017.

Witnessed documentary evidence filed by the landlord indicates that the Initial 10 Day Notice was left in the mail box or mail slot at the tenant’s residence at 11:00 a.m. on June 21, 2017. The Initial 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 Initial 10 Day Notice on June 24, 2017, three days after being left in the mail box or mail slot at the tenant's residence.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,500.00, 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 Initial 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 Initial 10 Day Notice, July 04, 2017 pursuant to Section 53 of the *Act*.

With respect to the Amended 10 Day Notice which the landlord submitted as evidence and upon which he is relying, in part, in his monetary claim, the landlord must prove that he served the tenant with the Amended 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act* in a Direct Request proceeding. As there has been no evidence submitted to prove service of the Amended 10 Day Notice, I cannot consider the Amended 10 Notice in this proceeding.

Furthermore, in a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Initial 10 Day Notice was issued to the tenant. The

Amended 10 Day Notice was dated on the same day as the Initial 10 Day Notice; accordingly, as rent for the month of July was not due on that date, it is not a record of any debt regarding July rent. Therefore, within the purview of the Direct Request process, as I am only able to consider the Initial 10 Day Notice for rent owed for June 2017 in the amount of \$2,500.00, I dismiss the monetary portion of the landlord's application for unpaid rent owing for July 2017 in the amount of \$2,500.00, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2,500.00, the amount claimed by the landlord, 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,500.00 for rent owed for 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 monetary portion of the landlord's application for unpaid rent owing for July 2017 in the amount of \$2,500.00, 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: August 01, 2017

Residential Tenancy Branch