



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 865345

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 August 16, 2017, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this mailing. 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 August 16, 2017.

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 February 18, 2017, indicating a monthly rent of \$1,000.00, due on the thirty first day of each month for a tenancy commencing on February 1, 2017. The tenancy agreement indicates that the tenant is responsible for 40% of the utilities;

- A Monetary Order Worksheet showing the utilities owing and paid during the relevant portion of this tenancy;
- A copy of a utility bill from BC Hydro for the rental unit dated June 6, 2017 for \$598.11, listing the tenant's portion of 40% as \$239.25;
- A copy of a demand letter from the landlord to the tenant, dated June 6, 2017, requesting payment of utilities in the amount of \$239.87; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 2, 2017, with a stated effective vacancy date of August 7, 2017, for \$239.25 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 7:30 pm on August 2, 2017. The 10 Day Notice states that the tenant had five days from the date of service to pay the utilities 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 August 5, 2017, three days after its posting.

I find that the tenant was obligated to pay 40% of the utilities as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the utilities 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, August 15, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid utilities owing as of August 13, 2017.

I find that the amount of utilities listed on the 10 Day Notice and the BC Hydro bill does not match with the utilities owing on the Monetary Order Worksheet, the utility demand letter and the total monetary amount requested by the landlord.

For this reason the monetary portion the landlord's application is dismissed, with leave to reapply.

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 monetary portion of the landlord's application 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 17, 2017

Residential Tenancy Branch