



Dispute Resolution Services

Page: 1

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 August 22, 2017, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant 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 August 22, 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 November 14, 2015, indicating a monthly rent of \$1,350.00, due on the last day of each month for a tenancy commencing on November 15, 2015;

- 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 August 6, 2017, with a stated effective vacancy date of August 16, 2017, for \$2,850.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant on August 6, 2017. The landlord had the tenant sign the Proof of Service Notice to End Tenancy form to confirm personal service. 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on August 6, 2017.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,350.00, 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, August 16, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of August 21, 2017.

I find that the monthly breakdown of rent owing on the Monetary Order Worksheet is not clear as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on Worksheet. I find that the monthly rent established in the tenancy agreement is \$1,350.00 however the landlord has indicated that \$1,450.00 was charged for the period of December 2016 to March 2017. I also note that the landlord has included the costs for storage in the amounts of \$200.00 for December 2016 and January 2017 and \$300.00 for February 2017.

As these discrepancies prevent me from determining the precise amount of rent owing, the monetary portion of 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 landlord's application for a Monetary Order 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 23, 2017

Residential Tenancy Branch