



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 18, 2017, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord 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 August 23, 2017, the fifth day after their registered mailing.

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 April 05, 2017, indicating a monthly rent of \$2,200.00, due on the first day of each month for a tenancy commencing on April 05, 2017;

- A Monetary Order Worksheet showing the rent owing as follows:
 - April 5, 2017 - \$2,200.00
 - May 1, 2017 - \$2,200.00
 - June 1, 2017 - \$2,200.00
 - July 1, 2017 - \$2,200.00; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 31, 2017, with a stated effective vacancy date of August 13, 2017, for \$8,800.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenant's door at 8:00 p.m. on July 31, 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 August 03, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,200.00, 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 13, 2017.

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. 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.

Pursuant to the terms of the residential tenancy agreement noted above, the tenancy began on April 05, 2017 with rent being payable on the first day of the month. As noted on the Monetary Order Worksheet, the landlord is seeking full rent for the month of April, despite the fact the tenancy began on April 05, 2017. Accordingly, as the monthly rent payable is based on a rental period that falls on the first of each month and, as the landlord did not submit evidence to substantiate an entitlement to a monetary amount prior to the commencement of the tenancy, I find the landlord is entitled only to pro-rated rent for April 2017 in the amount of \$1,906.67, which I have calculated as follows: 26 days (April 05-April 30) x \$73.33 (per diem based on \$2,200/30 days).

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$8,506.67, the amount claimed by the landlord for unpaid rent owing for April (pro-rated as above), May, June and July 2017 as of August 16, 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(s) 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 \$8,506.67 for rent owed for April (pro-rated as above), May, June and July, 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.

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 28, 2017

Residential Tenancy Branch