



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 29, 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 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 29, 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 December 24, 2013, indicating a monthly rent of \$1,050.00, due on the first day of each month for a tenancy commencing on January 1, 2014;
- A copy of a Notice of Rent Increase form dated July 1, 2015, and showing the rent being increased from \$1,040.00 to the current monthly rent amount of \$1,076.25 as of October 1, 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 18, 2017, with a stated effective vacancy date of August 28, 2017, for \$1,075.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 6:30 pm on August 18, 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on August 18, 2017.

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 28, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for August 2017 as of August 24, 2017.

Part 3, section 41 of the *Act* establishes that “a landlord must not increase rent except in accordance with this Part”

Part 3, section 42(2) of the *Act* establishes that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase”. The second page of the Notice of Rent Increase form provides additional information regarding the 3 month requirement. “For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st.”

As the Notice of Rent Increase provided by the landlord is dated July 1, 2015, I find that the three months were August, September, and October, meaning the rent increase would have been for November 1, 2015. I find that the effective date on the Notice of Rent Increase was October 1, 2015, one month too early.

Part 3, section 42(4) of the *Act* states that “If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply” and section 43(5) of the *Act* provides that “If a landlord collects a rent increase that

does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.”

The landlord has not provided evidence to show whether the tenant began paying the increased rent in October 2015 or in November 2015. I also note that there is no documentation showing whether, if the increase was paid as of October 2015, the tenant reduced a subsequent months’ rent to recover the overpayment.

I find that I am unable to determine the precise amount of rent owing and, for this reason 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: September 01, 2017

Residential Tenancy Branch