



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 September 14, 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 September 19, 2017, the fifth day after the 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 May 28, 2017, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on June 1, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of an e-transfer e-mail in the amount of \$800.00 and dated August 25, 2017, which the landlord has noted was accepted “for use and occupancy only on August 28, 2017”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 5, 2017, with a stated effective vacancy date of August 15, 2017, for \$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 11:30 a.m. on August 5, 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 8, 2017, three days after its posting.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$800.00, as per the tenancy agreement.

I accept the evidence before me that the Tenant has failed to pay the rent owed in full by August 13, 2017, within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five 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 18, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession for unpaid rent as of August 28, 2017.

I note that the Tenant has paid the rent for August 2017 in full on August 25, 2017, after the five days granted under section 46(4) of the *Act*.

In a Direct Request proceeding, a Landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the Tenant. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the Landlord's application for rent owed for September 2017.

For this reason, the monetary portion of the Landlord's application for unpaid rent owing from September 2017 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 28, 2017

Residential Tenancy Branch