



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 18, 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 September 18, 2017, the day it was personally served to the tenant.

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, who is not the applicant, and the tenant on January 15, 2010, indicating a monthly rent of \$779.00, due on the first day of each month for a tenancy commencing on February 01, 2011 to the last day of January, 2012 and thereafter on a month-to-month basis;

- A copy of a residential tenancy agreement which was signed by the landlord, who is not the applicant, and the tenant on September 21, 2012, indicating a monthly rent of \$812.00, due on the first day of each month for a tenancy identified in that agreement as commencing on February 01, 2011 to the last day of January, 2012 and thereafter on a month-to-month basis;
- A copy of a residential tenancy agreement which was signed by the landlord, who is not the applicant, and the tenant on July 08, 2013, indicating a monthly rent of \$819.00, due on the first day of each month for a tenancy identified in that agreement as commencing on February 01, 2011 to the last day of January, 2012 and thereafter on a month-to-month basis;
- A copy of a residential tenancy agreement which was signed by the landlord, who is not the applicant, and the tenant on August 15, 2013, indicating a monthly rent of \$819.00, due on the first day of each month for a tenancy identified in that agreement as commencing on February 01, 2011 to the last day of January, 2012 and thereafter on a month-to-month basis;
- Three Notice of Rent Increase forms showing the rent being increased from \$837.00 to the current monthly rent amount of \$911.00;
- A copy of a letter dated September 14, 2017 advising that the transfer of ownership of the landlord named in the initial tenancy agreement to the landlord named on the Application for Dispute Resolution occurred as of May 15, 2014;
- 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 September 03, 2017, with a stated effective vacancy date of September 13, 2017, for \$1,822.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 2:00 p.m. on September 03, 2017. The landlord had a witness sign the Proof of Service Notice to End Tenancy 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 September 03, 2017, the day it was personally served to the tenant.

I accept the evidence before me that the tenant has failed to pay the rent owed in full 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 effective date of the 10 Day Notice, September 13, 2017. Therefore, I find that the landlord is entitled to an Order of Possession.

In relation to the Monetary Order, the landlord's Application for Dispute Resolution by Direct Request has requested a Monetary Order in the amount of \$1,822.00 which arises from unpaid rent for August and September 2017.

The monthly rent in the tenancy agreement dated January 15, 2010 was established at \$779.00. The previous landlord and the current landlord have established a new monthly rent amount by way of four tenancy agreements and three Notice of Rent Increase forms as listed above. However, I find the following:

- There was a rent increase from \$812.00 on the agreement signed September 21, 2012 to \$819.00 on either July 08, 2013 or August 15, 2013. As per section 42 of the *Act*, a landlord must not impose a rent increase for at least 12 months from when the last increase was made. According to the evidence submitted, this rent increase may have been made in contravention of the *Act*,
- The dates of the residential tenancy agreements do not align with the commencement dates for these agreements; and
- There was also a rent increase from \$819.00 to \$837.00 which lacks the necessary documentation, which is a requirement of the Direct Request process.

While I am satisfied that the tenant has not paid rent, the documentation in relation to the rent increase amount is insufficient to enable the issuance of a Monetary Order.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenant to participate, there is a much higher burden placed on landlord in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied. 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. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

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.

For the above reasons, I dismiss the landlord's claim for a Monetary Order but provide the landlord leave to re-apply for the outstanding rent through the conventional participatory hearing process.

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 26, 2017

Residential Tenancy Branch