



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on October 02, 2017, the landlord's agent sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that each of the tenants is deemed to have been served with the Direct Request Proceeding documents on October 07, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement between Landlord SMPR and the tenants signed on February 01, 2017, indicating a monthly rent of \$2,200.00, due on the fifth day of each month for a tenancy commencing on February 01, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;

- Statement from Landlord SMPR for the period September 25, 2016 to September 25, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 12, 2017, with a stated effective vacancy date of September 30, 2017, for \$2,200.00 in unpaid rent; and
- A copy of a decision and monetary order from the Residential Tenancy Branch stemming from a hearing on June 07, 2017 in relation to this tenancy.

Documentary evidence filed by the landlords indicates that the 10 Day Notice was sent by registered mail to the tenants on September 12, 2017. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Notice states that the tenants 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 tenants were deemed served with the 10 Day Notice on September 17, 2017, five days after its mailing.

I find that the tenants were 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 tenants have 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 tenants are 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 30, 2017.

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 tenants to participate, there is a much higher burden placed on landlords 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.

I have reviewed all documentary evidence and I find that there was a previous decision and monetary order regarding this tenancy made by an arbitrator at the Residential Tenancy Branch (RTB), dated June 07, 2017, which granted a monetary order to Landlord SMPR for rent arrears which included the months of May and June 2017. I further find that it appears that the landlords are requesting a monetary order for those same months that were already addressed in the previous decision made on June 07, 2017 and for which a monetary order was granted in their favour. For this reason, the monetary portion of the landlords' application relating to outstanding rent for May and June 2017 is dismissed without leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$2,200.00, the amount claimed by the landlords for unpaid rent owing for September, 2017 as of September 27, 2017.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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 landlords a Monetary Order in the amount of \$2,200.00 for rent owed for September, 2017. The landlords are provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: October 10, 2017

Residential Tenancy Branch