



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

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 October 20, 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 October 25, 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 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 February 1, 2004, indicating a monthly rent of \$950.00, due on the first day of each month for a tenancy commencing on February 1, 2004;
- Seven copies of Notice of Rent Increase forms showing the rent being increased from \$950.00 to the current monthly rent amount of \$1,177.00;
- 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 October 3, 2017, with a stated effective vacancy date of October 13, 2017, for \$1,177.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 7:00 (a.m. or p.m. not indicated) on October 3, 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 October 3, 2017.

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, October 13, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of October 12, 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 43 of the *Act* provides the following requirements regarding the amount of a rent increase:

(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

In 2011, the maximum allowable increase in accordance with the regulations was 2.3%. I find that 2.3% of the rent at the time was \$21.85 yet the Notice of Rent Increase submitted by the landlord indicates that the rent was increased by \$22.00.

In 2012, the maximum allowable increase in accordance with the regulations was 4.3%. I find that 4.3% of the rent at the time was \$41.80 yet the Notice of Rent Increase submitted by the landlord indicates that the rent was increased by \$44.00.

In 2016, the maximum allowable increase in accordance with the regulations was 2.9%. I find that 2.9% of the rent at the time was \$31.99 yet the Notice of Rent Increase submitted by the landlord indicates that the rent was increased by \$32.00.

As the landlord has increased the rent above the maximum calculated in accordance with the regulations, I find that the landlord has not complied with the requirements under Section 43(1)(a) of the *Act*.

I find that the landlord has not provided evidence to show they had either an order from the director or the tenant's written agreement to increase the rent in accordance with sections 43(1)(b) or (c) of the *Act*. Therefore, I find that I am not able to confirm the precise amount of rent owing.

For this reason, I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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: October 26, 2017

Residential Tenancy Branch