



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

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 November 16, 2017, the landlord’s agent “MK” served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

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 November 21, 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of an “Application for Dispute Resolution by Direct Request” which the landlord filed on November 16, 2017, and which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on November 16, 2017;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on February 27, 2016, indicating a monthly rent of \$1,012.00, due on the last day of the month preceding the month for which rent is due;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,049.00 for outstanding rent, comprised of the balance of unpaid rent due by October 31, 2017;
- The landlord established the manner in which the monthly rent was raised from the initial \$1,012.00 stated in the tenancy agreement to the current amount of \$1,049.00 by providing a copy of a “Notice of Rent Increase” form, dated December 15, 2016, provided to the tenant during the course of the tenancy;
- A copy of a document titled “Notice of Late Rent”, dated October 31, 2017, in which the landlord establishes that the tenant owes unpaid rent in the amount of \$1,049.00, as well as late rent charges;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 01, 2017, which the landlord states was served to the tenant on November 01, 2017, for \$1,049.00 in unpaid rent due on October 31, 2017, with a stated effective vacancy date of November 11, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent “MK” served the Notice to the tenant by way of posting it to the door of the rental unit at 7:30 PM November 01, 2017. The Proof of Service form establishes that the service was witnessed by “CK” and a signature for “CK” is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five

days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on November 04, 2017, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,049.00, as the landlord has established that the monthly rent amount was raised in an appropriate manner from the initial amount of \$1,012.00, as established in the tenancy agreement, to the current amount of \$1,049.00. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,049.00, comprised of the balance of unpaid rent owed by October 31, 2017 for the month of November 2017.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, November 14, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,049.00 for unpaid rent owing for November 2017, as of November 16, 2017.

As the landlord was 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(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 find that the landlord is entitled to a monetary Order in the amount of \$1,149.00 for rent owed for November 2017, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 22, 2017

Residential Tenancy Branch