



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 November 20, 2017, the landlord's agent "MB" served the tenant with the Notice of Direct Request Proceeding via registered mail. 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 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 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 17, 2017, and which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on November 17, 2017;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on July 12, 2017, indicating a monthly rent of \$900.00, due on the first day of the month, for a tenancy commencing on August 01, 2017;
- 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 \$925.00 for outstanding rent, comprised of the balance of unpaid rent owed for October 2017;

- A copy of a rental ledger which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 20, 2017, which the landlord states was served to the tenant on October 20, 2017, for \$925.00 in unpaid rent due on October 01, 2017, with a stated effective vacancy date of November 02, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "MB" served the Notice to the tenant by way of posting it to the door of the rental unit at 2:30 PM on October 20, 2017. The Proof of Service form establishes that the service was witnessed by "DP" and a signature for "DP" 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 October 23, 2017, three days after its posting.

As part of the monetary claim established on the Direct Request Worksheet, as well as the amount claimed on the application form, I find that the landlord has included a fee for which reimbursement cannot be sought by way of the Direct Request process. The monthly rent owed is \$900.00; however, the landlord has submitted a monetary claim in the amount of \$925.00. The tenancy agreement demonstrates that a \$25.00 late payment fee would be charged to the tenant for rental arrears. As reimbursement for additional fees, such as late payment fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent for the month of October 2017, in the amount of \$900.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$900.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$900.00, comprised of the balance of unpaid rent owed by October 01, 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. I note that the amount identified on the Notice that included the late payment fee does not invalidate the Notice, as rent in the amount of \$900.00 was owed at the time it was issued.

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 Notice, November 02, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$900.00 for unpaid rent owing for October 2017, as of November 17, 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 \$1,000.00 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 29, 2017

Residential Tenancy Branch