



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 27, 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 is deemed to have been served with the Direct Request Proceeding documents on November 1, 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 July 10, 2011, indicating a monthly rent of \$1,700.00, for a tenancy commencing on July 15, 2011;
- Two copies of Notice of Rent Increase forms showing the rent being increased from \$1,700.00 to the current monthly rent amount of \$1,850.00;
- 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 18, 2017, with a stated effective vacancy date of October 28, 2017, for \$28,866.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenant at 2:30 pm on October 18, 2017. The landlord had the tenant sign the Proof of Service Notice to End Tenancy form 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 October 18, 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 28, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of October 27, 2017.

Paragraph 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify “the day in the month, or in the other period on which the tenancy is based, on which the rent is due.”

The residential tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due, which is necessary in order to determine the accuracy of the amount of outstanding rent indicated on the 10 Day Notice as a landlord cannot ask for October’s rent before the day it is due.

Part 3, section 41 of the *Act* establishes that “a landlord must not increase rent except in accordance with this Part”

Section 42 (1) of the *Act* establishes that

- (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

Section 43 (1) of the *Act* states that

(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.

The first Notice of Rent Increase submitted by the landlord indicates that the rent will be increased from \$1,700.00 to \$1,800.00 as of November 1, 2013. In 2013, the maximum allowable increase in accordance with the regulations was 3.8%. I note that 3.8% of \$1,700.00 is \$64.60. I find that the landlord has increased the rent by \$100.00, which is above the maximum calculated in accordance with the regulations. The landlord has not provided any evidence to demonstrate they had an order from the Residential Tenancy Branch or the tenant's written consent which would allow them to increase the rent above the maximum percentage for the year.

The second Notice of Rent Increase submitted by the landlord indicates that the rent will be increased from \$1,800.00 to \$1,850.00 as of March 1, 2014. In 2014, the maximum allowable increase in accordance with the regulations was 2.2%. I note that 2.2% of \$1,800.00 is \$39.60. I find that the landlord has increased the rent by \$50.00, which is above the maximum calculated in accordance with the regulations. The landlord has not provided any evidence to demonstrate they had an order from the Residential Tenancy Branch or the tenant's written consent which would allow them to increase the rent above the maximum percentage for the year.

I also note that the landlord has not provided a full 12 months between November 1, 2013, the effective date of the first rent increase, and March 1, 2014, the effective date of the second rent increase.

For these reasons, I find that the landlord has not raised the rent in accordance with Part 3 of the *Act*.

I find that the absence of a due date on the tenancy agreement and the illegal rent increases prevent me from being able to determine the precise amount of rent owing. Therefore, 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: November 02, 2017

Residential Tenancy Branch