



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 November 01, 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 November 06, 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 April 30, 2010, indicating a monthly rent of \$1,290.00, due on the first day of each month for a tenancy commencing on June 01, 2010;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;

- A document from the landlord dated October 29, 2017 uploaded to the Residential Tenancy Branch dispute access site as “Direct Request – Comments”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 17, 2017, with a stated effective vacancy date of October 17, 2017, for \$4,300.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant on October 17, 2017, in the p.m. The landlord had a witness sign the Proof of Service Notice to End Tenancy 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 17, 2017, the day it was personally served to the tenant.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,290.00, as per the tenancy agreement.

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 corrected effective date of the 10 Day Notice, October 27, 2017.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material 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.

In relation to the monetary claim, I find that the information contained in the Direct Request Worksheet does not correspond with the information contained in the Direct Request – Comments document dated October 29, 2017, which refers to an agreement between the landlord and tenant to forgive a portion of the tenant’s outstanding rent. Accordingly, I dismiss

the landlord's monetary claim relating to rent for December 2016 and July 2016 as set out on the Direct Request Worksheet but grant the landlord leave to re-apply through the conventional participatory hearing process.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2,580.00, the amount claimed by the landlord, for unpaid rent owing for April and October 2017 as of October 27, 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 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 \$2,680.00 for rent owed for April and October 2017 and 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 monetary claim relating to rent for December 2016 and July 2016 with leave to re-apply through the conventional participatory hearing process.

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 08, 2017

Residential Tenancy Branch