



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Preliminary Matters

The landlord named two people as respondents in their Application for Dispute Resolution however I find that the residential tenancy agreement submitted by the landlord is only signed by Tenant M.C.G. I find that I am only able to proceed against the tenant who signed the residential tenancy agreement.

Section 64(3)(c) allows me to amend a landlord's Application for Dispute Resolution to remove the respondent E.C.G. who has not signed the tenancy agreement, which I have done.

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 2, 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 7, 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*?

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 16, 2013, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on July 16, 2013;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 19, 2017, with a stated effective vacancy date of October 31, 2017, for \$1,825.00 in unpaid rent. The 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;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the Notice was posted to the tenant's door at 1:00 pm on October 19, 2017;
- A copy of a receipt dated October 1, 2017, for \$1,700.00 of rent, paid by the tenant, which the landlord has indicated is "for use and occupancy only"; and
- A Monetary Order Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 22, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,700.00, 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, November 1, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of November 2, 2017.

I find that the amount requested by the landlord in their online application was \$1,825.00. The landlord uploaded a copy of a paper application which indicates they are requesting \$1,700.00. The use and occupancy receipt for the payment made in October 2017 indicates there was a balance owing of \$1,850.00

I also note that the monthly breakdown of rent owing on the ledger is incomplete as it does not include information for the months of October 2016, January 2017, February 2017, March 2017, May 2017, and June 2017.

I find that I am not able to confirm the precise amount of rent owing. For this reason the monetary portion the landlord's application is dismissed, with leave to reapply

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant **and any other occupant** fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a Monetary Order 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 10, 2017

Residential Tenancy Branch