



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 09, 2017, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords 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 14, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by an agent for the landlords and the tenant on August 23, 2016, indicating a monthly rent of

\$1,400.00, due on the first day of each month for a tenancy commencing on September 01, 2016;

- A copy of an Amendment to Lease Agreement signed by the agent for the landlords and the tenant on June 17, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) dated September 14, 2017, with a stated effective vacancy date of September 29, 2017, for \$1,301.00 in unpaid rent. 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;
- A copy of a Proof of Service Notice to End Tenancy form and a Canada Post Customer Receipt containing a Tracking Number which indicate that the 10 Day Notice was sent to the tenant by registered mail on September 14, 2017; and
- A Monetary Order Worksheet and Tenant 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 September 19, 2017, five days after its mailing.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,400.00, 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 effective date of the 10 Day Notice, September 29, 2017.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlords’ application for a monetary claim arising from rent owed for October and

November 2017. For this reason, I dismiss the portion of the landlords' monetary claim for unpaid rent owing from October and November 2017, with leave to reapply.

Further, the only monetary award available to a landlord in a Direct Request proceeding is for unpaid rent and unpaid utilities. I note in the Tenant Ledger that the landlords have also sought a monetary award for matters relating to late charges. In that regard, I am not able to consider that aspect of the landlords' claim through the Direct Request process. Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$1,200.00, calculated as follows:

Date	Amount of Rent Payable	Amount of Rent Received	Balance
June 20, 2017			0.00
July 1, 2017	\$1,400	\$0	(\$1,400.00)
August 1, 2017	\$1,400	\$0	(\$2,800.00)
August 17, 2017		\$3,000.00	\$200
September 01, 2017	\$1,400.00		(\$1,200.00)

I dismiss the landlords' claims for late charges in the amount of \$101.00, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,200.00, the amount of rent outstanding for September 2017 as of November 07, 2017.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords 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 landlords a Monetary Order in the amount of \$1,300.00 for rent outstanding for September 2017, as set out above, and for the recovery of the filing fee for this application. The landlords are 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 portion of the landlords' monetary claim for unpaid rent owing from October and November 2017, with leave to reapply.

I dismiss the landlords' claims for late charges in the amount of \$101.00, 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 *Act*.

Dated: November 15, 2017

Residential Tenancy Branch