Dispute Resolution Services

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 22, 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 submission 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 27, 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 August 22, 2017, indicating a monthly rent of $1,700.00, due on the first day of each month for a tenancy commencing on September 01, 2017;

- Copy of a letter from the landlord to the tenant dated November 08, 2017 “re: Notice of Intent to vacate”;

- A copy of page 1 of 2 of a hydro utility bill for the rental unit dated October 27, 2017 for $161.87;

- A copy of a natural gas utility bill for the rental unit dated October 26, 2017 for $54.92 (CR);

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 03, 2017 for $1,700.00 in unpaid rent and $141.89 in unpaid utilities (the 10 Day Notice). The 10 Day Notice provides 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 on the stated effective vacancy date of November 12, 2017;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:35 a.m. on November 03, 2017; and

- A Monetary Order Worksheet 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 November 06, 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 16, 2017.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. As well, Direct Request Policy Guideline # 39 C.2. further sets out that the landlord must prove that they served the tenant with the demand letter and a copy of the utility bill(s); and, the letter must be received by the tenant at least 30 days before issuing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent. The landlord submitted a copy of a letter they sent to the tenant dated November 08, 2017 "re. Notice of Intent to vacate" [Reproduced as written]; however that letter does not make reference to a demand for payment of utilities nor does it include copies of the utility bills. Further, the letter was not received by the tenant at least 30 days prior to the landlord issuing the 10 Day Notice. For these reasons the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

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 Proceeding, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for October 2017. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from October 2017, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of $1,700.00, the amount claimed by the landlord, for unpaid **rent** owing for November 2017 as of November 22, 2017.

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 $1,800.00 for rent owed for November 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 monetary portion of the landlord's application concerning unpaid utilities, with leave to reapply.

I dismiss the monetary portion of the landlord's application for unpaid rent owing from October 2017, 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 28, 2017

Residential Tenancy Branch