



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 three 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 Tenants G.B. and J.B. I find that I am only able to proceed against the tenants 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 J.F. 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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on November 23, 2017, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that each of the tenants is deemed to have been served with the Direct Request Proceeding documents on November 28, 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 tenants on October 17, 2002, indicating a monthly rent of \$845.00, due on the first day of each month for a tenancy commencing on November 01, 2002;

- Five copies of Notice of Rent Increase forms showing the rent being increased from \$991.12 to the current monthly rent amount of \$1,183.06;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 06, 2017 (the "Notice"), with a stated effective vacancy date of November 20, 2017, for \$1,183.06 in unpaid rent plus \$25.00 in parking fees. The Notice states that the tenants 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 witnessed Proof of Service Notice to End Tenancy form which indicates that the Notice was personally served to Person J.F., an adult who resides with the tenants, at 12:55 p.m. on November 06, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a receipt for "Use and Occupancy Only" dated November 16, 2017 in the amount of \$1,258.06 indicating payment of the outstanding rent for November, parking fees, late fees and N.S.F. fees by the tenants (the Receipt).

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the Notice on November 06, 2017, the day it was handed to Person J.F.

I accept the evidence before me that the tenants have 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 Notice within that five day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, November 20, 2017, and the landlord is entitled to an Order of Possession.

I note that the only monetary award available to a landlord by way of the Direct Request Proceedings is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to parking fees in the amount of \$25.00 I would not be able to consider this aspect of the landlord's claim through the Direct Request Proceedings.

I find that the tenants have paid the rent outstanding for November in the amount of \$1,183.06 as indicated on the Receipt. For this reason, the amount being claimed for unpaid rent for November as part of this Application is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 monetary claim in the amount of \$1,183.06 for outstanding rent for November, without leave to reapply.

I dismiss the landlord's monetary claim in the amount of \$25.00 relating to parking fees, 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 29, 2017

Residential Tenancy Branch