



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 27, 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 December 02, 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, who is not the applicant, and the tenant on September 26, 2012, indicating a monthly rent of \$500.00, due on the first day of each month for a tenancy commencing on October 15, 2012;
- Four copies of Notice of Rent Increase forms showing the rent being increased from \$500.00 to the current monthly rent amount of \$558.08;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 03, 2017 for \$608.08 in unpaid rent (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 16, 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 3:00 p.m. on November 03, 2017;
- A Direct Request Worksheet indicating the amount listed for unpaid rent on the 10 Day Notice was \$217.95;
- A corrected Direct Request Worksheet indicating the amount listed for unpaid rent on the 10 Day Notice was \$608.08; and
- A copy of a Resident Ledger from the landlord dated November 27, 2017 which indicates charges and payments to/from the tenant in regard to the rental unit.

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 \$558.08, as per the tenancy agreement and Notice of Rent Increase forms.

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, November 16, 2017. Therefore, I find that the landlord is entitled to an Order of Possession.

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

I find that the monthly breakdown of rent owing on the corrected Direct Request Worksheet does not match with the total monetary amount requested by the landlord on the Application nor with the amount paid by the tenant. Further, as set out in the Resident Ledger as of November 01, 2017, I note that there were parking fees that appear incorporated into the calculations made by the landlord, which I cannot consider in a Direct Request Proceeding. For these reasons the monetary portion the landlord's application is dismissed, with leave to reapply.

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.

I dismiss the monetary portion the landlord's application with leave to reapply.

Pursuant to section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 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.

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: December 04, 2017

Residential Tenancy Branch