



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 December 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 December 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 the landlords and the tenant on May 26, 2017, indicating a monthly rent of \$1,200.00, due on

the first day of each month for a tenancy commencing on May 26, 2017 (the May Tenancy Agreement);

- A copy of a residential tenancy agreement which was signed by Landlord J.W. and the tenant on October 02, 2018, indicating a monthly rent of \$1,200.00, due on the first day of each (the October Tenancy Agreement);
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 26, 2017 for \$1,600.00 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 December 07, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door and placed in the tenant's mailbox or mail slot at 1:00 (a.m. or p.m. not indicated) on November 26, 2017;
- A copy of a document entitled "Discovery, Agreement and Payment" in relation to the tenant; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I note that the date the October Tenancy Agreement is signed is October 02, 2018. As this date has not yet occurred, pursuant to section 62 of the *Act*, I find this is an inadvertent error by both parties, and that the date should have been October 02, 2017. In support of this finding, the document entitled "Discovery, Agreement and Payment" sets out that a new rental agreement was signed on October 02, 2017.

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 29, 2017, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00, 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, December 09, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$1,600.00, the amount claimed by the landlords, for unpaid rent owing for October and November 2017 as of December 06, 2017.

As the landlords were 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 \$1,700.00 for rent owed for October and November 2017 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.

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 15, 2017

Residential Tenancy Branch