



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 December 20, 2017, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail addressed to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions 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 25, 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 on June 01, 2013 and signed by the tenant on June 06, 2013, indicating a monthly rent of \$500.00, due on the first day of the month for a tenancy commencing on January 01, 2013;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$4,000.00 for outstanding rent. The landlord indicates that there is unpaid rent owing in the amount of \$500.00 for each month comprising the period of May 2017 to December 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 01, 2017, which the landlord states was served to the tenant on December 01, 2017, for \$4,000.00 in unpaid rent due on December 01, 2017, with a stated effective vacancy date of December 15, 2017; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on December 01, 2017. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on December 06, 2017, five days after its registered mailing.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the first day of each month. Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the first day of each month for a tenancy commencing on January 01, 2013. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day.

According to the Notice to End Tenancy served to the tenant, and the Direct Request worksheet provided by the landlord, the landlord establishes that there is unpaid rent owed for the months comprising the period of May 2017 to December 2017. As the landlord issued the Notice to End Tenancy on December 01, 2017, after unpaid rent remained due for months of May 2017 to November 2017, I find that the landlord has issued the Notice to End Tenancy to the tenant, with respect to unpaid rent owed for those months, in a manner that complies with the requirements set forth under Section 46(1) of the *Act*. Therefore, it is open to the landlord to pursue an Order of Possession pursuant to the December 01, 2017 Notice to End Tenancy served to the tenant in respect of unpaid rent owing for the period of May 2017 to November 2017.

The information provided on the Direct Request worksheet and on the Notice to End Tenancy provides that the amount of \$4,000.00 indicated on the Notice, dated December 01, 2017, is comprised of unpaid rent owed in the amount of \$500.00 for each of the months comprising the period of May 2017 to December 2017. Although the landlord's request for an Order of Possession is being heard based on a Notice to End Tenancy served in accordance with the *Act* pursuant to unpaid rent owed for the period of May 2017 to November 2017, the higher amount indicated on the Notice to End Tenancy does not invalidate the Notice, as, at a minimum, there remained unpaid rent owing in the amount of \$3,500.00 at the time the Notice was issued.

I find that the tenant was obligated to pay monthly rent in the amount of \$500.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$4,000.00, comprised of the balance of unpaid rent owed for the months comprising the period of May 2017 to December 2017.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, December 16, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$4,000.00 for unpaid rent owing for the period of May 2017 to December 2017, as of December 18, 2017, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

As the landlord was 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(s) 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 find that the landlord is entitled to a monetary Order in the amount of \$4,100.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: December 29, 2017

Residential Tenancy Branch