



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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 29, 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 submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on January 3, 2018, 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 tenant on April 30, 2016, indicating a monthly rent due on the first day of each month for a tenancy commencing on April 30, 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 6, 2017 for \$196.24 in unpaid rent and \$24.68 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 December 21, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 4:25 pm on December 6, 2017;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on December 6, 2017;
- A copy of a utility bill from BC Hydro for the rental unit dated November 17, 2017 for \$74.00;
- A copy of a utility bill from Fortis BC for the rental unit dated November 20, 2017 for \$74.00;
- A copy of an invoice from the landlord to the tenant, dated December 2017, requesting payment of utilities in the amount of \$24.68; 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 December 11, 2017, five days after its registered mailing.

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, December 21, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of December 21, 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. I find that the dates on the invoice and utility bills are less than 30 days from the time that the 10 Day Notice was issued to the tenant and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent. For this reason the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

The residential tenancy agreement submitted by the landlord indicates three different amounts for the rent: \$250.00, \$905.00, and \$452.50. I find that this discrepancy prevents me from determining the precise amount of unpaid rent owing and, for this reason, the monetary portion of the landlord's application concerning unpaid rent is dismissed with leave to reapply.

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 landlord's application for a Monetary Order for unpaid rent and utilities 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 *Residential Tenancy Act*.

Dated: January 04, 2018

Residential Tenancy Branch