



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 January 9, 2018, the landlord served the tenant the Notice of Direct Request Proceeding by handing the documents to an adult staying in the unit. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89(2) of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 9, 2018.

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 and the tenant on April 5, 2017, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on April 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 12, 2017 for \$2,355.00 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 22, 2017;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 10:00 am on December 12, 2017; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence and I find that the tenant's address on the residential tenancy agreement submitted by the landlord does not match the tenant's address on the Application for Dispute Resolution, the 10 Day Notice or any other documentation submitted with the Application for Dispute Resolution.

I also note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. On the Direct Request Worksheet, the landlord has listed the monthly rent owing for December 2017 as \$2,355.00. In order to claim for additional rent, the Direct Request Worksheet must clearly show the breakdown of any additional months for which the tenant still owes rent in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement.

I find that these discrepancies raise questions that can only be addressed through a participatory hearing.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant. Section 89(2) of the *Act* does allow for the

Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering the issuance of an Order of Possession for the landlord.

As the landlord will have to serve the tenant with a Notice of a Reconvened Hearing, it may be advisable for them to serve all of the original Notice of Direct Request documentation with the Notice of a Reconvened Hearing in accordance with Section 89(1) of the *Act* so that the monetary portion of the claim can be heard.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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 10, 2018

Residential Tenancy Branch