Dispute Resolution Services

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 January 11, 2018, 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 is deemed to have been served with the Direct Request Proceeding documents on January 16, 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*?

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 30, 1998, indicating a monthly rent of $650.00, due on the first day of each month for a tenancy commencing on May 01, 1998;

- Eight copies of Notice of Rent Increase forms showing the rent being increased from $650.00 to the current monthly rent amount of $863.00;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 03, 2018 for $863.00 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 January 13, 2018;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to Tenant J.I., not named in this application, at 10:00 a.m. on January 03, 2018; and

- A Direct Request 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 section 88 of the *Act,* I find that the tenant was duly served with the 10 Day Notice on January 03, 2018, the day it was personally served to Tenant J.I.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 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, January 13, 2018, pursuant to Section 53 of the *Act.* Therefore, I find that the landlord is entitled to an Order of Possession.

In relation to the Monetary Order, I find in the Application for Dispute Resolution by Direct Request that the landlord establishes a request for a monetary order in the amount of $863.00 which arises from unpaid rent for January 2018.

The monthly rent in the tenancy agreement was established at $650.00. The landlord has established a new monthly rent amount by way of eight Notice of Rent Increase forms. However, it appears that the Notice of Rent Increase forms dated August 15, 2009 and June 14, 2016 may increase the rent beyond the amount permitted under the *Act.* The 10 Day Notice that forms the basis of the landlord's Application relies on the current monthly rent amount that has been established as a result of a potentially incorrect amount on the Notice of Rent Increase forms dated August 15, 2009 and June 14, 2016 provided to the tenant. Therefore, while I am satisfied that the tenant has not paid rent, the documentation in relation to the rent increase amount is insufficient to enable the issuing of a Monetary Order.

As Direct Request Proceedings are *ex parte* proceedings, and the opposing party is not invited to participate in the hearing or make any submissions, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

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.

For the above reasons, I dismiss the landlord's claim for a Monetary Order for unpaid rent but provide the landlord leave to re-apply for the outstanding rent through the conventional participatory hearing process.

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: January 17, 2018

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Residential Tenancy Branch