



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 January 17, 2018, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on January 17, 2018, the day it was personally served to the tenant.

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 tenant on August 03, 2016, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on August 07, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,320.00 to 1,360.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 07, 2018 for \$1,360.00 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 16, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to Person R.P., an adult who resides with the Tenant, at 12:00 p.m. on January 07, 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 07, 2018, the day it was personally served to Person R.P.

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, January 17, 2018. Therefore, I find that the landlords are entitled to an Order of Possession.

In relation to the Monetary Order, I find that in the Application for Dispute Resolution by Direct Request, the landlords establish a request for a Monetary Order in the amount of \$1,360.00 which arises from unpaid rent for January 2018.

The monthly rent in the tenancy agreement was established at \$1,200.00 per month, as set out in the agreement under section 3 a) as follows: "The tenant will pay the rent of \$1200 + \$120 utilities = \$1320 per month..." [Reproduced as written]

Pursuant to the *Act*, a rent increase can only be calculated on the amount of rent. In that regard, I find that the landlords have established a new monthly rent based on an improper calculation, as the landlords included the amount for utilities in their calculation of the rent increase. Rent, as defined under the *Act*, does not include utilities. Therefore, while I am satisfied that the tenant has not paid rent, I am dismissing the landlords' request for a Monetary Order for unpaid rent and utilities, with leave to reapply.

As the landlords were partially 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.

I dismiss the landlords' claim for a Monetary Order for unpaid rent and utilities but provide the landlords leave to reapply for the outstanding rent and utilities through the conventional participatory hearing process.

Pursuant to sections 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$100.00 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: January 18, 2018

Residential Tenancy Branch