



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on January 31, 2018, the landlord’s agent “KC” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on February 05, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants on June 22, 2016, indicating a monthly rent of \$1,250.00 due on the first day of the month for a tenancy commencing on July 01, 2016;
- The landlord established the manner in which the monthly rent was raised from the initial \$1,250.00 stated in the tenancy agreement to the current amount of \$1,296.25 by providing a copy of a "Notice of Rent Increase" form, dated March 07, 2017, provided to the tenant during the course of the tenancy;
- Copies of receipts which demonstrate that partial payments were provided by the tenants and were acknowledged by the landlord as being received for use and occupancy only;
- Copies of notices provided to the tenants by the landlord which alert the tenants to outstanding balances owed with respect to the tenancy. The outstanding balances were comprised of unpaid rent, and fees owed for parking, as well as late fees and NSF fees;
- 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 \$1,846.25 for outstanding rent, comprised of the balance of unpaid rent owed for the months of December 2017 and January 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 19, 2018, which the landlord states was served to the tenants on January 19, 2018, for \$1,846.25 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of February 01, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "KC" served the Notice to the tenants by way of posting it to the door of the rental unit at 4:00 PM on January 19, 2018. The Proof of Service form establishes that the service was witnessed by "AM" and a signature for "AM" is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all relevant documentary evidence provided by the landlords. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after

its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on January 22, 2018, three days after its posting.

As part of the monetary claim established on the Direct Request worksheet, the landlord has indicted that unpaid rent remains outstanding for December 2017, in the amount of \$500.00. The landlord indicates that the rent owed for the month of January 2018 is \$1,346.25. However, the Notice of Rent Increase form, dated March 07, 2017, provided to the tenant during the course of the tenancy, demonstrates that the monthly rent was raised to \$1,296.25. The discrepancy in the amount of rent listed as being owed for January 2018 may be due to additional fees charged by the landlord, as the landlord has provided copies of notices provided to the tenants which alert the tenants to outstanding balances owed with respect to the tenancy, which were comprised of unpaid rent, and additional fees owed for parking, as well as late fees and NSF fees.

As reimbursement for additional fees, such as late payment fees, NSF fees, and parking fees cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent for the period of December 2017 and January 2018. In calculating the monthly rent owed for January 2018, I will rely on the information provided in the Notice of Rent Increase form, dated March 07, 2017, which indicates that the monthly rent was increased to \$1,296.25.

On the Direct Request worksheet, the landlord indicates that there is a balance of unpaid rent owed in the amount of \$500.00 for December 2017, and when added to the unpaid rent owed for January 2018, in the amount of \$1,296.25, results in a balance of unpaid rent owed in the amount of \$1,796.25.

I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,796.25, comprised of the balance of unpaid rent owed for the months of December 2017 and January 2018.

I accept the landlord's undisputed evidence and find that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, February 01, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,796.25 for unpaid rent owing for the months of December 2017 and January 2018, as of January 17, 2018, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,796.25 for unpaid rent. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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: February 07, 2018

Residential Tenancy Branch