



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 the landlord “FZ” served the tenant with the Notice of Direct Request Proceeding via registered mail on February 02, 2018. The Proof of Service form also establishes that the service was witnessed by “SY” and a signature for “SY” is included on the form. Although the landlord has indicated that the documents were served by way of registered mail, the evidentiary material provided by the landlord demonstrates that the landlord used a similar mail delivery service provided by “FedEx”.

The landlord provided a copy of a FedEx waybill which provides the details and tracking number associated with the mail service provided by FedEx. The information provided on the waybill demonstrates that the FedEx mail item was addressed to the tenant and included the address of the rental unit as the destination address for delivery.

The FedEx website provides details associated with the tracking number for the mailed item which demonstrates that the mailed item was received and subsequently signed-for on February 05, 2018. Section 71 of the *Act* provides, in part, the following:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

In the Direct Request process, 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 subsections 89(1) and (2) of the *Act*, which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

Although the landlord did not use a mail service provided by Canada Post, I find that the evidentiary material before me demonstrates that the method of service undertaken by the landlord is sufficiently similar to the registered mail service provided by Canada Post to allow me to exercise my discretion under section 71(2)(b) of *Act* to find that the tenant has been sufficiently served for the purposes of the *Act*. The information provided by the landlord on the FedEx waybill demonstrates that the item was addressed to the tenant at the address of the rental unit, and further, similar to the service provided by Canada Post, a signature was provided by the recipient to serve as confirmation of delivery.

Therefore, I find that, in accordance with section 71(2)(b) of the *Act*, the tenant has been served with the served with the Direct Request Proceeding documents on February 05, 2016.

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 “FZ” and the tenant on October 27, 2017, indicating a monthly rent of \$3,800.00, due on the first day of the month for a tenancy commencing on November 01, 2017;
- 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 \$4,000.00, comprised of the balance of unpaid rent, in the amount of \$3,800.00, due by January 01, 2018, and an amount of \$200.00 which the

landlord asserts is owed by the tenant for the unpaid utility charges due by January 01, 2018;

- A copy of a hydro bill which demonstrates that there is a balance of \$221.28 owed for hydro charges related to the rental unit;
- Copies of documents which, as the landlord asserts, depicts text message correspondence between the landlord and tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 22, 2018, which the landlord states was served to the tenant on January 22, 2018, for \$3,800.00 in unpaid rent due on January 01, 2018, and \$200.00 for unpaid utilities due on January 01, 2018 with a stated effective vacancy date of February 01, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord "FZ" served the Notice to the tenant by way of posting it to the door of the rental unit at 4:00 PM on January 22, 2018. The Proof of Service form establishes that the service was witnessed by "SY" and a signature for "SY" is included on the form.

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

Analysis

Although an individual identified as "WJ" is included on the application for dispute resolution as an applicant landlord, "WJ" is not listed as a landlord on the tenancy agreement. As neither the name nor signature for "WJ" appears on the tenancy agreement to demonstrate that "WJ" entered into a tenancy agreement with the tenant, I will consider the application with "FZ" being the sole landlord, and amend the application to exclude "WJ" as a party to this dispute.

I have reviewed all documentary evidence provided by the landlord. 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 25, 2018, three days after its posting.

As part of the application for a monetary Order, the landlord indicates on the Direct Request worksheet that an amount of \$200.00 is sought for unpaid utility charges arising from, as the landlord contends, the amount owed by the tenant for his portion of hydro service provided to the rental unit. Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the evidentiary material before me includes a copy of a tenancy agreement, which does not demonstrate that the tenant is expected to pay utility charges with respect to payments owed arising from hydro service provided to the rental unit. The landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to by demonstrating that the tenancy agreement included a term with respect to the tenant agreeing to provide additional payments for utility services. The landlord has not provided any documentary evidence to demonstrate that the parties agreed that the tenant would be responsible for payment of utility services such as hydro.

I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of \$3,800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$3,800.00, comprised of the balance of unpaid rent owed by January 01, 2018 for the month of January 2018.

I accept the landlord's undisputed evidence and find that the tenant 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 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 Notice, February 04, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,800.00 for unpaid rent owing for January 2018, as of February 01, 2018, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

As the landlord was 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(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 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$3,900.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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