



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 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 27, 2018, the landlord 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. The Proof of Service form also establishes that the service was witnessed by “AK” and a signature for “AK” is included on the form.

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 01, 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:

- 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 and the tenant "CD" on October 20, 2017, indicating a monthly rent of \$2,200.00 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 \$599.18 for outstanding rent, comprised of the balance of unpaid rent due by January 01, 2018. The landlord indicates that the tenant provided a partial payment of \$1,900.00 on January 05, 2018;
- A copy of a document, dated January 05, 2018, demonstrating that the tenant provided a partial payment of \$1,900.00 by way of an Interac e-transfer payment to the landlord;
- Copies of hydro and gas utility bills;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 11, 2018, which the landlord states was served to the tenants on January 12, 2018, for \$599.18 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 21, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant "CD" at 6:00 PM on January 12, 2018. The Proof of Service form establishes that the service was witnessed by "AK" and a signature for "AK" 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

Although a second individual, identified as "SS", is listed as a respondent tenant on the application and as a second tenant on the tenancy agreement, a signature for "SS" does not appear on the tenancy agreement to demonstrate that "SS" entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord's application against the tenant "CD" only.

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on January 12, 2018.

In the Application for Dispute Resolution by Direct Request, the landlord has indicated that a portion of the partial payment of \$1,900.00 provided by the tenant on January 05, 2018 was directed to an amount the landlord contends was owed by the tenant for utility services. The landlord has provided copies of utility bills which, as the landlord contends, depict the amounts owed and paid by the tenant. The landlord also provided a copy of a document demonstrating that the tenant provided a partial payment of \$1,900.00 by way of an Interac e-transfer payment

to the landlord on which the landlord has written that \$299.18 was directed toward utility payments.

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 gas and hydro services 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 gas and 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 \$2,200.00, as established in the tenancy agreement. The landlord has provided evidentiary material to demonstrate that the tenant provided a partial payment of \$1,900.00 on January 05, 2018, which, when applied toward unpaid rent owed as of January 01, 2018, would result in a balance of unpaid rent owing in the amount of \$300.00.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$300.00, 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 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 corrected effective date of the Notice, January 22, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$300.00 for unpaid rent owing for January 2018, as of January 23, 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(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 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$400.00 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(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 01, 2018

Residential Tenancy Branch