



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 31, 2018, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on February 5, 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 tenants on July 27, 2017, indicating a monthly rent of \$2,600.00, due on the first day of each month for a tenancy commencing on August 15, 2017;
- A copy of a text message from the landlord to the tenant dated November 29, 2017, requesting payment of the water bill for the months of September 2017 and October 2017;
- A copy of a utility bill from the City of Abbotsford for the rental unit dated November 17, 2017 for \$146.17;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 15, 2018 for \$2,750.00 in unpaid rent and \$146.17 in unpaid utilities (the 10 Day Notice). The 10 Day Notice provides

that the tenants 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 25, 2018;

- A copy of a Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities form which indicates that the 10 Day Notice and the 30 day demand to pay utilities were sent to the tenants by registered mail on January 15, 2018;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice and demand letter were sent to the tenants on January 15, 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 20, 2018, five days after its registered mailing.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,600.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have 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 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 10 Day Notice, January 30, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2,750.00, the amount claimed by the landlord, for unpaid rent owing for October 2017, December 2017, and January 2018 as of January 26, 2018.

In this type of matter the landlord must prove that they served the tenants with the demand letter and a copy of the utility bill in accordance with section 88 of the *Act*. Text message is not a recognized method of service under the *Act*.

The landlord has also submitted a Proof of Service of the Written Demand to Pay Utilities form which indicates the demand letter was sent to the tenants by registered mail on January 15, 2018. Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the date of the demand letter is less than 30 days from the time that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent.

For these reasons the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

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(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 grant the landlord a Monetary Order in the amount of \$2,850.00 for rent owed for October 2017, December 2017, and January 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid utilities with leave to reapply.

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 06, 2018

Residential Tenancy Branch