



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 06, 2018, at 5:45 PM, the landlord’s agent “GC” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “BW” and a signature for “BW” is included on the form.

Based on the written submissions of the landlord, 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 February 06, 2018.

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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 11, 2017, indicating a monthly rent of \$1,300.00, due on the last day of the month preceding the month for which rent is due, for a tenancy commencing on October 15, 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 \$4,550.00 for outstanding rent, comprised of the balance of unpaid rent owed for the months comprising the period of October 2017 to January 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 04, 2018, which the landlord states was served to the tenant on January 04, 2018, for \$5,270.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 14, 2018. The landlord indicates that the amount of unpaid rent owed is \$4,550.00, however, an amount of \$5,270.00 was listed as owing on the Notice, as additional fees such NSF fees and an amount owed for the deposit were included. The landlord states that those additional fees will not be sought by way of the Direct Request process;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "MP" served the Notice to the tenant by way of personal service via hand-delivery on January 04, 2018. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service form on January 04, 2018.

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

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on January 04, 2018.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,300.00, 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 \$4,550.00, comprised of the balance of unpaid rent owed for the months comprising the period of October 2017 to 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 effective date of the Notice, January 14, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$4,550.00 for unpaid rent owing for the months comprising the period of October 2017 to January 2018, as of February 02, 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 \$4,650.00 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 09, 2018

Residential Tenancy Branch