



Dispute Resolution Services

Page: 1

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 form which declares that on February 21, 2018, the landlord’s agent “JE” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant has been deemed served with the Direct Request Proceeding documents on February 26, 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 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's agent and the tenant on July 07, 2015, indicating a monthly rent of \$925.00, due on the first day of the month for a tenancy commencing on August 01, 2015;
- The landlord established the manner in which the monthly rent was raised from the initial \$925.00 stated in the tenancy agreement to the current amount of \$959.00 by providing a copy of a "Notice of Rent Increase" form provided to the tenant during the course of the tenancy;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,518.00 for outstanding rent due by February 01, 2018, comprised of the balance of unpaid rent owed for the period of December 2017 to February 2018. The landlord indicates that partial payments totaling \$1,300.00 were received from the tenant;
- Copies of receipts which show that the tenant provided three partial payments, totaling \$1,300.00, each of which were acknowledged by the landlord's agent as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 06, 2018, which the landlord states was served to the tenant on January 06, 2018, for \$1,518.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 19, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JE" served the Notice to the tenant by way of posting it to the door of the rental unit at 10:08 AM on January 06, 2018. The Proof of Service form establishes that the service was witnessed by "BP" and a signature for "BP" 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

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 09, 2018, three days after its posting.

The landlord's monetary claim, in the amount of \$1,518.00, as indicated on the Application for Dispute Resolution by Direct Request and on the Direct Request worksheet, is comprised of the balance of unpaid rent owed from the months of December 2017, January 2018, and February 2018.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, January 01, 2018. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for February 2018 and will therefore make a determination based on the amount of unpaid rent indicated as being due by January 01, 2018, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for February 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the January 06, 2018 Notice issued to the tenant, which alerted the tenant to unpaid rent due by January 01, 2018.

According to the evidentiary material provided by the landlord, the balance of unpaid rent due by January 01, 2018, for the months of December 2017 and January 2018, was \$1,918.00. The evidentiary material provided by the landlord further demonstrates that a partial payment of \$400.00 was received on January 04, 2018, and a second partial payment of \$700.00 was provided by the tenant on January 25, 2018, resulting in total partial payments of \$1,100.00. If the partial payments of \$1,100.00 are subtracted from the \$1,918.00 owed by January 01, 2018, a balance of \$818.00 remains outstanding for unpaid rent owed for the months of December 2017 and January 2018.

I find that the tenant was obligated to pay monthly rent in the amount of \$959.00, as the landlord has established that the monthly rent amount was raised from the initial amount of \$925.00, as established in the tenancy agreement, to the current amount of \$959.00.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$818.00, comprised of the balance of unpaid rent owed by January 01, 2018, for the months of December 2017 and 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 19, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$818.00 for unpaid rent owed for the months of December 2017 and January 2018, as of February 19, 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 \$918.00 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: March 01, 2018

Residential Tenancy Branch