



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 form which declares that on March 01, 2018, the landlord’s agent 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 March 06, 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 and the tenant, indicating a monthly rent of \$1,100.00, 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 that there is unpaid rent owed in the amount of \$290.00, comprised of the balance of unpaid rent due by February 01, 2018. The landlord also indicates that there is a balance of \$190.68 owed for unpaid utility charges;
- A copy of a water bill, in the amount of \$190.68;
- A copy of an email, sent by the landlord to the tenant, dated January 27, 2018, in which the landlord asks the tenant to provide reimbursement for a water bill;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated February 16, 2018, which the landlord state was served to the tenant on February 16, 2018, for \$550.00 in unpaid rent due on February 15, 2018, with a stated effective vacancy date of March 01, 2018. The Notice also states that an amount of \$190.00 is owed for utilities following a written demand provided on January 27, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "DB" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence on February 16, 2018. The Proof of Service form establishes that the service was witnessed by "PB" and a signature for "PB" 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 way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the

Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on February 19, 2018, three days after it was left in the mail box or mail slot.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

As part of the application for a monetary Order, the landlord indicates that an amount of \$190.00 is sought for unpaid charges arising from the amount the landlord claims is owed by the tenant for the water bill charges. 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.

“Policy Guideline #39 Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution for a monetary Order for unpaid rent arising from unpaid utilities, copies of the demand letter which includes copies of the utility bills. In this type of matter the landlord must prove that they served the tenant with the demand letter and a copy of the utility bill in accordance with section 88 of the *Act*. E-mail is not a recognized method of service under the *Act*.

I find that the application before me does not include a copy of a demand letter served to the tenant for unpaid utility charges which has been demonstrated to have been served in accordance with the Act. The landlord has provided a copy of an email, dated January 27, 2018, in which the landlord instructs the tenant to provide reimbursement for the cost of a water bill. The landlord contends that the written demand for payment of utilities was provided to the tenant in the form of the email dated January 27, 2018.

Although the tenancy agreement does stipulate that the tenant is required to pay the charges arising from the municipal water service provided with respect to the rental unit, the landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act*, or the requirements under "Policy Guideline #39 Direct Requests", were adhered to, as the landlord has not provided a copy of a written demand served to the tenant in a manner approved by the Act, as the Act does not permit for documents to be served by way of e-mail.

Based on the foregoing, I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, and the requirements under "Policy Guideline #39 Direct Requests", 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 an Order of Possession and a monetary Order to the unpaid rent claimed as owing to the landlord.

Even if the landlord's request in the January 27, 2018 document is to be interpreted as a demand letter, if a tenant is provided a written demand to provide payment of a utility charge for which she is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. If the landlord issued a Notice for unpaid utilities on February 16, 2018, I find that the landlord has not waited more than 30 days from the date of the written demand to the tenant, and has, therefore, issued the Notice, with respect to unpaid utilities, to the tenant on a date earlier than permitted under the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,100.00, 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 \$290.00, comprised of the balance of unpaid rent owed by February 01, 2018 for the month of February 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, March 01, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$290.00 for unpaid rent owing for February 2018, as of February 27, 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 dismiss that portion of the landlord's application for a monetary Order that arises from unpaid utilities with leave to reapply.

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 \$390.00 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 09, 2018

Residential Tenancy Branch