



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 form which declares that on March 09, 2018, the landlord “KS” 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.

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 March 14, 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 landlord and the tenant “DA” on December 10, 2012, indicating a monthly rent of \$2,000.00 due on the first day of the month for a tenancy commencing on December 10, 2012;
- 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 \$2,900.00 for outstanding rent, comprised of the balance of unpaid rent owed for the months of February 2018 and March 2018. The landlord indicates that monthly rent in the amount of \$2,000.00 was owed for February 2018, and that a partial payment of \$1,100.00 was received on February 22, 2018, resulting in a balance of unpaid rent owed for February 2018 in the amount of \$900.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 22, 2018, which the landlord states was served to the tenant on February 22, 2018, for \$2,000.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of March 04, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord “KS” served the Notice to the tenant by way of posting it to the door of the rental unit at 6:00 PM on February 22, 2018. The Proof of Service form establishes that the service was witnessed by “JS” and a signature for “JS” 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 February 25, 2018, three days after its posting.

Although a second individual, identified as “DW”, is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request and as a second tenant on the tenancy agreement, a signature for “DW” does not appear on the tenancy agreement to demonstrate that “DW” 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 "DA" only.

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, February 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 March 2018 and will therefore make a determination based on the amount of unpaid rent indicated as being due by February 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 March 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the February 22, 2018 Notice issued to the tenant, which alerted the tenant to unpaid rent due by February 01, 2018. According to the evidentiary material provided by the landlord, the amount of unpaid rent due by February 01, 2018 was \$2,000.00. The evidentiary material provided by the landlord further demonstrates that a partial payment of \$1,100.00 was provided by the tenant on February 22, 2018, resulting in a balance of unpaid rent owed for February 2018 in the amount of \$900.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,000.00, 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 \$900.00, 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 corrected effective date of the Notice, March 07, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$900.00 for unpaid rent owing for February 2018, as of March 05, 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 the landlord's monetary claim for unpaid rent owing for March 2018, 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 \$1,000.00 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 15, 2018

Residential Tenancy Branch