



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 24, 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. The Proof of Service form also establishes that the service was witnessed by “NK” and a signature for “NK” is included on the form.

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 01, 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 April 26, 2014, indicating a monthly rent of \$830.00, due on the first day of the month for a tenancy commencing on April 26, 2014;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord indicates that there is unpaid rent owed in the amount of \$2,034.00, comprised of the balance of unpaid rent owed for the period of September 2017 to January 2018;
- Copies of seven receipts which show that the tenant provided seven partial payments, totaling \$3,100.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 09, 2018, which the landlord states was served to the tenant on January 09, 2018, for \$2,784.00 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 "LK" served the Notice to the tenant by way of posting it to the door of the rental unit at 2:00 PM on January 09, 2018. The Proof of Service form establishes that the service was witnessed by "AK" and a signature for "AK" 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 12, 2018, three days after its posting.

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 landlords 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.

On the Direct Request worksheet provided by the landlord, the landlord calculates the unpaid rent owing based on monthly rent owed in the amount of \$860.00 for the months of September 2017 to December 2017, and \$894.00 for January 2018. However, the landlord has not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$830.00, as established in the tenancy agreement, to the amount of \$860.00, and subsequently \$894.00, as indicated on the Direct Request worksheet, nor has the landlord provided any documentary evidence to clarify why the monthly rent for the period identified above was depicted to be based on a higher amount than stated in the tenancy agreement.

The landlord has not provided any evidentiary material, such as copies of Notice of Rent Increase forms served to the tenant, to demonstrate that the monthly rent was increased, nor has the landlord provided any evidence to illustrate that the parties amended the terms of the tenancy agreement to agree upon a new monthly rent amount, or that the parties mutually agreed in writing on a new monthly rent amount. Therefore, in determining the monthly rent amount agreed upon by the parties, I will rely upon the information provided in the tenancy agreement, which establishes that the monthly rent amount to be paid by the tenant is \$830.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$830.00, as established in the tenancy agreement. The landlord provided documentary evidence to demonstrate that for the period of September 2017 to January 2018, the tenant provided partial payments totalling \$3,100.00, which, if deducted from the cumulative monthly rent owed for the same period, results in a balance of unpaid rent in the amount of \$1,050.00 owed for the period of September 2017 to January 2018.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,050.00, comprised of the balance of unpaid rent owed for the period of September 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 corrected effective date of the Notice, January 22, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,050.00 for unpaid rent owed for the period of September 2017 to January 2018.

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 \$1,150.00 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 02, 2018

Residential Tenancy Branch