



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EVEREAST INTERNATIONAL ENTERPRISE LTD
and [tenant name suppressed to protect privacy]

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 02, 2018, at 7:30 PM, the landlord’s agent “KC” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “NQ” and a signature for “NQ” 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 March 02, 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 on May 02, 2016 and signed by the tenant on April 28, 2016, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on May 01, 2016;

- 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 \$3,811.29 for outstanding rent, comprised of the balance of unpaid rent owed for the period of December 2017 to February 2018. The landlord also includes amounts claimed as owed by the tenant for parking and NSF fees;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 18, 2018, which the landlord states was served to the tenant on February 19, 2018, for \$3,811.29 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of March 01, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the rental unit at 4:30 PM on February 19, 2018. The Proof of Service form establishes that the service was witnessed and a signature for the witness 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 22, 2018, three days after its posting.

The Notice issued to the tenant, under the section where the tenant is given a 10-day notice to vacate the rental unit, provides a slightly incorrect address for the rental unit, as the address entered in that field is slightly different than the address for the rental unit as indicated on other documents included as part of this application, such as the application for dispute resolution and the tenancy agreement. I have amended this address to match all other information provided for the address of the rental unit as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

As part of the monetary claim established on the Direct Request worksheet, and on the Application for Dispute Resolution by Direct Request, the landlord has included amounts owed for fees for which reimbursement cannot be sought by way of the Direct Request process. The monthly rent owed is \$1,100.00 each month, however, the information provided on the Direct Request worksheet provided by the landlord demonstrates that the landlord has included parking fees and NSF fees which the landlord claims are owed by the tenant.

As reimbursement for additional fees, such as parking fees and NSF fees, cannot be sought by way of the Direct Request process, I will consider only the portion of the monetary claim which arises from unpaid rent owed for the period of December 2017 to February 2018. I note the landlord remains at liberty to file a separate Application for Dispute Resolution seeking to recover additional fees agreed upon by the parties in the tenancy agreement.

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 \$3,300.00, comprised of the balance of unpaid rent owed for the period of December 2017 to 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 04, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,300.00 for unpaid rent owing for the period of December 2017 to February 2018, as of February 28, 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 \$3,400.00 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 12, 2018

Residential Tenancy Branch