



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 landlords for an Order of Possession based on unpaid rent and a monetary claim for unpaid rent and the filing fee.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2018, the landlords served the tenant the Notice of Direct Request Proceeding by registered mail; the Canada Post receipts were provided as evidence. Pursuant to the deeming provisions in section 90 of the *Residential Tenancy Act*, I find that service was effected five days after it was mailed, on March 21, 2018.

Issue(s) to be Decided

Are the landlords 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 landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on April 10, 2014, indicating a monthly rent of \$1,650.00, due on the first day of the month for a tenancy commencing on May 1, 2014.
- A Monetary Order Worksheet showing the rent owing in the sum of \$1,650.00 for February, \$1,650.00 for March and a \$100.00 filing fee previously awarded to the landlords; total owing is calculated at \$3,400.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 2, 2018, with a stated effective vacancy date of February 18, 2018, for \$1,650.00 in unpaid rent.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 1, 2018, with a stated effective vacancy date of March 14, 2018 for March rent of \$1,650.00.

Evidence filed by the landlords indicates that the final 10 Day Notice was served by posting it on the tenant's door at 1 pm on March 4, 2018; a witness signed a statement confirming this service. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was effectively served with the 10 Day Notice on March 7, 2018.

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 tenant 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. The onus is on the landlords to present evidentiary material that 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 landlords 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.

Furthermore, section 59 of the *Residential Tenancy Act* establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

In the evidence submitted, the landlords referenced a decision of this office dating back to December of 2017; as a result of that application, the landlords were awarded an Order for Possession. Accordingly, I find that the tenancy resulting from the 2014 tenancy agreement to have effectively ended. The landlords have not submitted evidence of a new agreement with the tenant to rent the premises, nor is there any indication of an agreement as to the amount of the rent due and payable. It is possible that there was a verbal or supplemental agreement put in place, however, I cannot conclude this in the absence of testimony from both parties or some form of written evidence. Accordingly, I also cannot conclude with any certainty that there is rent in arrears.

I further find that I am not able to consider the landlords' Application for Dispute Resolution without this additional evidence which forms a part of the Application, and that a participatory hearing is necessary.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlords' application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. For more information see our website at: gov.bc.ca/landlordtenant.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Elsewhere in BC: 1-800-665-8779

This interim 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 28, 2018

Residential Tenancy Branch