



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPRM-DR

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 26, 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 03, 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*?

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 November 06, 2017, indicating a monthly rent of \$1,795.00, due on the first day of the month for a tenancy commencing on November 06, 2017;

- 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 \$895.00 for unpaid rent due by February 01, 2018. The landlord indicates that a partial payment of \$900.00 was received on February 06, 2018;
- A copy of a receipt, dated, February 19, 2018, demonstrating that the tenant provided a payment, in the amount of \$925.00, which the landlord cited as being received as late rent for February, and was acknowledged as being received for use and occupancy only. The landlord provided a subsequent note on their Application for Dispute Resolution by Direct Request stating that this payment represented a full payment of rent owed for February 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 06, 2018, which the landlord states was served to the tenant on February 06, 2018, for \$895.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 19, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RP" served the Notice to the tenant by way of posting it to the door of the rental unit on February 06, 2018. The Proof of Service form establishes that the service was witnessed by "PD" and a signature for "PD" 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 09, 2018, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,795.00, as established in the tenancy agreement. 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.

Section 46 of the *Act* provides, in part, the following:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I accept the evidence before me that the tenant had failed to pay rental arrears in the amount of \$895.00, comprised of the balance of unpaid rent owed by February 01, 2018 for the month of February 2018, within the five days granted under section 46 (4) of the *Act*. The landlord had provided evidence to demonstrate that the tenant did subsequently provide payment in a partial installment on February 19, 2018, which, when added to the earlier partial payment received on February 06, 2018, totalled the full amount of monthly rent owed for February 2018.

The landlord provided a statement on their Application for Dispute Resolution by Direct Request stating that the tenant had provided full payment for the monthly rent owed for February 2018, and that they wished to pursue an Order of Possession, as the full amount of rent was not paid within the five days permitted after the tenant received the Notice.

I find that the full payment of rent for the month of February 2018 was not provided within five days of receipt of the Notice and did not adhere to the timelines set out in section 46(4) of the *Act*.

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, February 19, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 06, 2018 Notice served to the tenant for unpaid rent owing for February 2018.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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.

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