



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 and a Monetary Order for unpaid rent and utilities.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2018, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 17, 2018, the day it was personally served to them.

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 and utilities 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 on November 14, 2016, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on November 16, 2016.
- A Monetary Order Worksheet showing rent owing for January, February and March 2018 in the amount of \$2,350.00.
- Utility bills from Fortis BC dated August 25, 2017, September 26, 2017, October 24, 2017, November 23, 2017 and December 27, 2017 for an amount totaling \$319.59.
- Utility bills from BC Hydro dated September 29, 2017 and November 30, 2017 for an amount totaling \$584.43;
- A copy of a demand letter from the landlord to the tenant, dated December 28, 2017, requesting payment of utilities in the amount of \$688.42;
- A copy of a witnessed Proof of Service Notice Written Demand to Pay Utilities form which indicates that the demand letter was personally served to the tenant at 9:00 am on January 16, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 3, 2018, with a stated effective vacancy date of March 16, 2018, for \$2,350.00 in unpaid rent and \$688.42 in unpaid utilities. 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.;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 11:30 am on March 3, 2018; and
- A copy of a receipt dated March 9, 2018, for \$1,300.00 of rent, paid by the tenant, which the landlord has indicated is "for use and occupancy only".

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 6, 2018, three days after its posting.

While the tenant paid an amount of \$1,300.00 on March 9, 2018, I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not dispute the 10 Day 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 effective date of the 10 Day Notice, March 16, 2018.

Section 46(6) of the *Act* provides the following regarding unpaid utilities:

If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Although the addendum to the tenancy agreement establishes that the tenant must pay 60% of the utility charges by bank/electronic transfer, I find that there is no indication that these utilities must be paid to the landlord.

As the Direct Request Process does not allow for clarification of the facts, I find that I am not able to consider the portion of the landlord's application relating to unpaid utilities.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,050.00 for unpaid rent owing for January, February and March 2018 as of March 15, 2018.

As the landlord was partially successful in their 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 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 grant the landlord a Monetary Order in the amount of \$1,150.00 for rent owed for January, February and March 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid utilities with leave to reapply.

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 20, 2018

Residential Tenancy Branch