



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 also applied for the filing fee.

The Landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 21, 2018, the Landlord sent the Tenants F.S. and M.B. the Notice of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants F.S. and M.B. have been deemed served with the Direct Request Proceeding documents on March 26, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. 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 signed copy of a residential tenancy agreement, indicating a monthly rent of \$750, due on the first day of each month for a tenancy commencing on May 16, 2017.
- A signed copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 6, 2018 for \$500.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of February 22, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 2:40 p.m. on February 6, 2018 and that this service was witnessed by a third party;
- A copy of a Direct Request Worksheet showing the monthly breakdown of rent owed as well as recording a partial payment of rental arrears on February 1, 2018 in the amount of \$250.00. The worksheet indicates a further payment in the amount of \$250.00 made after the 10 Day Notice was issued.
- A copy of a receipt from the Landlord to the Tenants dated March 1, 2018 stating that the \$250.00 received from the Tenants is for "use and occupancy only" and was received after the time stated due on the 10 Day Notice to End Tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on February 9, 2018, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$750.00, as per the tenancy agreement.

I accept the evidence before me that while the tenants have made a partial payment of rent on February 1, 2018 in the amount of \$250.00 they have 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.

I further accept the evidence before me that while the Tenants have made a second partial payment of rent on March 1, 2018 in the amount of \$250.00, the receipt provided to the Tenants for that payment was for "use and occupancy only". "Use and occupancy only" clearly indicates that the Landlord's intent was not to continue the tenancy.

Based on the foregoing, I find that the Tenants are conclusively presumed under sections 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 22, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$250.00, the amount claimed by the landlord, for unpaid rent owing for February 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 on the tenants**. Should the tenants 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 \$350.00 for rent owed for February 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.

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 28, 2018

Residential Tenancy Branch