



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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on March 22, 2018, the landlord sent each of the tenants 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 each of the tenants is deemed to have been served with the Direct Request Proceeding documents on March 27, 2018, 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*?

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 tenants on April 24, 2015, indicating a monthly rent of \$995.00, for a tenancy commencing on June 01, 2015;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$995.00 to the current monthly rent amount of \$1,025.00;
- Two copies of 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) dated March 09, 2018, each for \$1,025.00 in unpaid rent, one for January 2018, and one for February 2018. The 10 Day Notices provide 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 March 21, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 09, 2018, for \$1,025.00 in unpaid rent, owing for March 2018. The 10 Day Notice provide 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 March 21, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notices were left in the mailbox at the tenants' rental unit at 2:30 p.m. on March 09, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this 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 Notices on March 12, 2018, three days after being left in the mailbox.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,025.00 as per the tenancy agreement and the Notice of Rent Increase form.

I accept the evidence before me that the tenants 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.

Based on the foregoing, I find that the tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notices, March 21, 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 of the tenants 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.

Paragraph 13(2)(f)(v) of the *Act* establishes that a tenancy agreement is required to identify “the day in the month, or in the other period on which the tenancy is based, on which the rent is due.” I find the residential tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due.

I find that the landlord’s monetary claim for March 2018 rent is premature as there is no date indicating the day that the rent is due for March 2018 and the tenant has until the last day of March 2018 to pay the monthly rent for that month.

For the above reason, the landlord’s monetary claim for the monthly rent owing for March 2018 rent is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$2,050.00, for unpaid rent owing for January 2018 and February 2018 as of March 21, 2018.

As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,150.00 for rent owed for January 2018 and February 2018 as well as for the recovery of the filing fee. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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