



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 Proceedings which declare that on March 15, 2018 and March 16, 2018, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. Both tenants signed the proofs of service acknowledging receipt of the documents. Based on the written submissions of the landlord, I find that each of the tenants has been served with the Direct Request Proceeding documents in accordance with section 89 of the Act

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 a landlord who is not the applicant and tenants on May 15, 2012, indicating a monthly rent of \$1,100.00 due on the first day of the month for a tenancy commencing on May 15, 2012;
- A copy of a letter showing the transfer of ownership from the former landlord, who is named on the residential tenancy agreement, to the current landlord who is applying for dispute resolution;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a 10-Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 2, 2018 for \$1,240.00 in unpaid rent. The 10 Day Notice provides 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 on the stated effective vacancy date of March 12, 2018; and
- A copy of a Proof of Service Notice to End Tenancy form which was signed by the tenant and indicates that the 10 Day Notice was personally served by the landlord to the tenants at 1:45 pm on March 2, 2018.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were served with the 10 Day Notice on March 2, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

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 effective date of the 10 Day Notice, March 12, 2018.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply. However, I am satisfied that some rent money is due, and therefore I will issue the order of possession.

As the landlord was partially 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 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 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. 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. The landlord's monetary claim for unpaid rent is dismissed, with leave to reapply, since there was insufficient evidence to prove the actual amount of rent owed.

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