



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 submitted two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on March 22, 2018, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness and each tenant sign their respective Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 22, 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 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 Tenant E.Q. on January 14, 2017, indicating a monthly rent of \$1,000.00, due on the first day of the month for a tenancy commencing on February 01, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 22, 2018 for \$1,113.11 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 22, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was left with Tenant J.Y., an adult who resides with Tenant E.Q. on March 12, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice is for a date in the future that had not occurred at the time that the 10 Day Notice was issued to the tenant, although the Notice was given to the tenant for rent owing in the month that it was received. For this reason, I have amended the date of the 10 Day Notice to reflect the day it was witnessed being served to the tenant, March 12, 2018.

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on March 12, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,000.00 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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 22, 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.

I find that Tenant J.Y is not named on and has not signed the tenancy agreement, which is a requirement of the Direct Request Proceeding. For this reason the monetary portion of the landlord's application, naming Tenant J.Y., is dismissed, without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against Tenant E.Q. in the amount of \$1,113.11, the amount claimed by the landlord, for unpaid rent owing for February 2018 and March 2018 as of March 18, 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 against Tenant E.Q. in the amount of \$1,213.11 for rent owed for February 2018 and March 2018 as well as for the recovery of the filing fee. The landlord is provided with this Order in the above terms and Tenant E.Q. must be served with **this Order** as soon as possible. Should the Tenant E.Q. 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