



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 a signed Proof of Service of the Notice of Direct Request Proceeding form. The form indicates that the Notice of Direct Request Proceeding and copies of all supporting documents (the “Package”) were served on the tenant on February 19, 2018. The landlord attached a copy of a Canada Post Registered Mail Receipt containing a Tracking Number to confirm that the Package was mailed. The receipt indicates that the Package was mailed on March 19, 2018. I am satisfied, based on the receipt, that the Package was mailed on March 19, 2018 and not February 19, 2018 as stated in the Proof of Service of the Notice of Direct Request Proceeding form. I note that both the form and receipt indicate that the Package was mailed to the rental unit. Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Package on March 24, 2018, five days after the Package was sent by registered mail.

Issues 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 tenant on November 22, 2017, indicating a monthly rent of \$975.00, due on the first day of each month for a tenancy commencing on December 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) dated March 6, 2018 for \$860.00 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 19, 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 tenant’s door at 10:15 a.m. on March 6, 2018;
- A Direct Request Worksheet showing rent owing for March 1, 2018 in the amount of \$870.00; and
- A copy of a Bank of Montreal Direct Electronic Funds Transfer Service Returned Item List.

Analysis

I note that the name of the landlord on the Direct Request Application is “Affordable Housing Advisory Association” whereas the tenancy agreement indicates that the landlord is “A.H.A.A.”. I also note that the tenancy agreement has “Affordable Housing Societies” printed at the top of the first page and all three addendums. I have considered the tenancy agreement and all other documentary evidence submitted and I am satisfied that “A.H.A.A.” are the initials for Affordable Housing Advisory Association. I accept that the name on the Direct Request Application is the name of the landlord as indicated in the tenancy agreement.

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 9, 2018, three days after its posting.

I note that the tenancy agreement indicates that the rent for the unit is \$975.00 per month. The tenancy agreement includes an addendum indicating that the rent is related to the income of the tenant. This addendum was signed by both the landlord and tenant on November 22, 2017. In the Direct Request Application, the landlord indicates that the rent is subsidized such that the tenant pays \$870.00 per month. Further, the Direct Request Worksheet indicates that the rent due on March 1, 2018 was \$870.00. I also note that the Bank of Montreal Direct Electronic Funds Transfer Service Returned Item List references \$870.00. However, the 10 Day Notice indicates that the tenant failed to pay \$860.00 by March 1, 2018. Upon a review of the evidence, including the statement of the landlord in the Direct Request Application, I am satisfied that the tenant was obligated to pay \$870.00 in rent by March 1, 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 19, 2018.

I note that the only monetary award available to a landlord by way of the direct request process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for an NSF service charge in the amount of \$25.00, I would not be able to consider this aspect of the landlord's claim through the direct request process. This portion of the landlord's claim is dismissed with leave to reapply.

Given the above, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$870.00, the amount claimed by the landlord, for unpaid rent owing for March 2018 as of March 26, 2018.

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. 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 \$970.00 for rent owed for 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 the NSF service charge 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 28, 2018

Residential Tenancy Branch