



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 seeking an Order of Possession based on unpaid rent and the filing fee

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which states that on March 22, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord also provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and the evidence filed, in accordance with sections 89 and 90 of the Act, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 27, 2018, the 5th 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 recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement that was signed by each of the landlord and the tenant, setting out a monthly rent of \$1,000.00, due of the first day of each month, for a tenancy commencing on July 1, 2017.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2018, claiming \$1,000.00 in unpaid rent, (“the 10 Day Notice”). 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 vacate date of March 15, 2018.

- A copy of a duly witnessed Proof of Service of Notice to End Tenancy Form which states that the 10 Day notice was posted next to the tenant's door at 2:20 PM on March 2, 2018.
- A copy of a duly executed Proof of Service of Notice of Request for Direct Proceeding Form which states that this notice was sent to the tenant by registered mail on March 22, 2018.
- A copy of the registered mail receipt issued by Canada Post in relation to the service of the Notice of Request for Direct Proceeding Form.

Analysis

In an ex parte Direct Request Proceeding, the onus is on the landlord to ensure that all evidentiary material filed is in accordance with the prescribed criteria as to form and content and, that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all the documentary evidence and I find that the landlord has met the onus of providing full and proper evidence such that I may proceed with a Direct Request Proceeding.

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 5, 2018, three days after its posting next to the tenant's door.

I find that the tenant was 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 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 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 Notice, March 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession as requested.

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 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.

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 29, 2018

Residential Tenancy Branch