



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0790243 BC LTD
and [tenant name suppressed to protect privacy]

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 which declares that on April 24, 2018, the landlord’s agent “RH” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service form also establishes that the service was witnessed by “DH” and a signature for “DH” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on April 29, 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on May 13, 2017, indicating a monthly rent of \$2,900.00, due on the first day of each month for a tenancy commencing on September 01, 2017;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$760.00 for outstanding rent due by April 01, 2018, comprised of the balance of unpaid rent owed for the months of March 2018 and April 2018. The landlord has indicated on the Direct Request Worksheet, and on the application for dispute resolution, that the monetary claim includes charges for late fees;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 01, 2018, which the landlord states was served to the tenant on April 01, 2018, for \$760.00 in unpaid rent due on April 01, 2018, with a stated effective vacancy date of April 12, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RH" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's on April 01, 2018. The Proof of Service form establishes that the service was witnessed by "LH" and a signature for "LH" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on April 04, 2018, three days after it was left in the mail box or mail slot.

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 for 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.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and 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.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the tenth day of each month. Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the first day of each month. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's earliest opportunity to issue the Notice to the tenant for unpaid rent owing for April 2018 would have been on the second day of April 2018.

According to the application for dispute resolution and the Direct Request worksheet provided by the landlord, the landlord is seeking a monetary Order arising from unpaid rent owed for the months of March 2018 and April 2018. As the landlord issued the Notice, dated April 01, 2018, on April 01, 2018, the same day of the month on which the monthly rent is due, I find that the landlord has issued the Notice to the tenant, with respect to unpaid rent owed for April 2018, earlier than permitted under section 46 of the *Act*.

Therefore, with respect to unpaid rent owed for April 2018, I find that the Notice is not in compliance with the provisions of section 46 of the *Act* and that it is not open to the landlord to seek an Order of Possession and a monetary Order based on unpaid rent owed for April 2018. Based on the foregoing, I dismiss the portion of the landlord's application for a monetary Order with respect to unpaid rent owed for the month of April 2018 with leave to reapply.

However, the information provided on the application for dispute resolution and on the Direct Request worksheet provides that the landlord's monetary claim arises from unpaid rent owed for the months of March 2018 and April 2018. The Notice to End Tenancy issued to tenant includes the balance of unpaid rent owed in the amount of \$760.00 for the months of March 2018 and April 2018.

Therefore, it remains open for the landlord to pursue an Order of Possession and a monetary Order based on unpaid rent owed for March 2018, as I find that the 10 Day Notice to End Tenancy for Unpaid Rent served on April 01, 2018 for the portion of unpaid rent owed for the month of March 2018 has been served in accordance with the *Act*.

As part of the monetary claim established on the application for dispute resolution and on the Direct Request worksheet, the landlord has included a fee for which reimbursement cannot be sought by way of the Direct Request process. The landlord has added to the monetary claim unpaid charges arising from late fees for the months of March 2018 and April 2018. As reimbursement for additional fees, such as late payment fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent owed for the month of March 2018. I note the landlord remains at liberty to file a separate Application for Dispute Resolution seeking to recover late payment fees.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,900.00, as established in the tenancy agreement. I accept the evidence before me, as indicated on the Direct Request worksheet, that the tenant has failed to pay rental arrears in the amount of \$80.00, comprised of the balance of unpaid rent owed for the month of March 2018.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 corrected effective date of the Notice, April 14, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$80.00 for unpaid rent owed for the month of March 2018.

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(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 sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$180.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 30, 2018

Residential Tenancy Branch