



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 10, 2018, the landlord 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.

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 15, 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 and the tenant on January 03, 2018, indicating a monthly rent of \$1,450.00, due on the first day of each month for a tenancy commencing on January 03, 2018;
- 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 \$1,450.00 for outstanding rent, comprised of the balance of unpaid rent owed by March 01, 2018;
- Copies of hydro utility bills;
- Copies of documents which the landlord contends depict e-mail correspondence between the parties;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 26, 2018, which the landlord states was served to the tenant on March 26, 2018, for \$1,450.00 in unpaid rent due on March 01, 2018, with a stated effective vacancy date of April 06, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on March 26, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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

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 landlord 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.

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on March 31, 2018, five days after its registered mailing.

As part of the application for a monetary Order, the landlord indicates on the Application for Dispute Resolution by Direct Request that he seeks to recover money owed for an unpaid utility amount arising from, as the landlord asserts, the amount owed by the tenant for utility charges. Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the evidentiary material before me includes a copy of a tenancy agreement which does not demonstrate that the tenant is expected to pay utility charges with respect to the tenancy. The landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to by demonstrating that the tenancy agreement included a term with respect to the tenant agreeing to provide additional payments for utility services to the rental unit.

The landlord provided copies of documents which the landlord contends depict e-mail correspondence with the tenant with respect to unpaid rent and unpaid utility charges, whereby the landlord requests that the tenant provide payment for the outstanding utility payments. Even if the landlord's requests in these emails are to be interpreted as a demand letter, and as establishing that the parties agreed that the tenant is expected to

pay a portion of the utility charges, if a tenant is provided a written demand to provide payment of a utility charge for which he is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. However, e-mail is not an approved method of service permitted under the Act, and furthermore, the landlord must wait 30 days from the date of the written demand to the tenant before treating the unpaid utilities as unpaid rent and issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

However, there is no provision in the tenancy agreement that demonstrates that the tenant is expected to pay a portion of utility charges, nor is there an addendum to the agreement which includes an item that establishes that the tenant is expected to pay a portion of the utility services provided to the rental unit. The landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to by demonstrating that the tenancy agreement included a term with respect to the tenant agreeing to pay a portion of the utility services. I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

As part of the monetary claim established on the Application for Dispute Resolution by Direct Request, the landlord may have included unpaid amounts owed for the security deposit and pet damage deposit which, as the landlord asserts, remain unpaid. As reimbursement for additional fees, such as late payment fees, and balances owed for unpaid deposits, 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, as indicated on the March 26, 2018 Notice to End Tenancy served to the tenant, which alerted the tenant to unpaid rent owed by March 01, 2018, in the amount of \$1,450.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,450.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,450.00, comprised of the balance of unpaid rent owed by March 01, 2018 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 10, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,450.00 for unpaid rent owing for March 2018, as of April 03, 2018, the date

on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

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 \$1,550.00 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 17, 2018

Residential Tenancy Branch