



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON WEST COAST REALTY
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 09, 2018 the landlord’s agent “JM” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on April 09, 2018.

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 January 18, 2017, indicating a monthly rent of \$1,750.00, due on the first day of each month for a tenancy commencing on April 01, 2016;
- A copy of a "Notice of Rent Increase" form provided to the tenant during the course of the tenancy, which demonstrates that the rent was raised to the current amount of \$1,810.00;
- 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 \$1,810.00 for outstanding rent, comprised of the balance of unpaid rent due by March 01, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 12, 2018, which the landlord states was served to the tenant on March 13, 2018, for \$1,810.00 in unpaid rent due on March 01, 2018, with a stated effective vacancy date of March 22, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JM" served the Notice to the tenant by way of personal service via hand-delivery on March 13, 2018. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service 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 and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on March 13, 2018.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, March 01, 2018. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for April 2018 and will therefore make a determination based on the amount of unpaid rent indicated as being due by March 01, 2018, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for April 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the March 12, 2018 Notice issued to the tenant, which alerted the tenant to unpaid rent due by March 01, 2018. According to the evidentiary material provided by the landlord, the amount of unpaid rent due by March 01, 2018 was \$1,810.00, as indicated on the Notice served to the tenant.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,810.00, and accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,810.00, 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, March 23, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,810.00 for unpaid rent owing for 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 dismiss the landlord's monetary claim for unpaid rent owing for April 2018, with leave to reapply.

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 \$1,910.00 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 11, 2018

Residential Tenancy Branch