



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
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 11, 2018, the landlord’s agent 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 “VT” and a signature for “VT” 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 16, 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 October 13, 2017, indicating a monthly rent of \$935.00, due on the first day of each month for a tenancy commencing on October 15, 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 \$467.50 for outstanding rent, comprised of the balance of unpaid rent due by April 01, 2018;
- A copy of a "Mutual Agreement to End a Tenancy" form, dated October 13, 2017, which was signed by the landlord's agent and the tenant, which establishes that the parties agreed that the tenancy would end pursuant to the mutual agreement and that the tenant would vacate the rental unit at 1:00 PM on April 15, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 02, 2018, which the landlord states was served to the tenant on April 02, 2018, for \$467.50 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 "MN" served the Notice to the tenant by way of posting it to the door of the rental on April 02, 2018. The Proof of Service form establishes that the service was witnessed by "VT" and a signature for "VT" 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 posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on April 05, 2018, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$935.00, 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 \$467.50, comprised of the balance of unpaid rent owed by April 01, 2018 for the month of April 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 15, 2018.

I turn now to the copy of a "Mutual Agreement to End a Tenancy" form signed by both the landlord and tenant. Section 44 of the *Act* provides, in part, the following with respect to how a tenancy ends:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(ii) section 46 [*landlord's notice: non-payment of rent*];

(c) the landlord and tenant agree in writing to end the tenancy;

I find that the "Mutual Agreement to End a Tenancy" form signed by the parties had the effect of ending the tenancy on April 15, 2018. By virtue of its form and contents, and in accordance with the provisions of section 44(1)(c) of the *Act*, I find that the mutual agreement entered into by the parties effectively ended the tenancy on April 15, 2018, as agreed by the parties.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$467.50 for unpaid rent owing for April 2018, as of April 11, 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 \$567.50 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 19, 2018

Residential Tenancy Branch