



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 Notice of Direct Request Proceeding form which declares that on March 19, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding and copies of all supporting documents by registered mail to the rental unit. The landlord 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 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 24, 2018, five days after the documents were sent by registered mail.

Issues 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:

- Residential tenancy agreement which was signed by the landlord and the tenant on December 12, 2016, indicating a monthly rent of \$850.00, due on the first day of each month for a tenancy commencing on January 1, 2017;
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 02, 2018 for \$1,218.00 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 effective vacancy date of March 12, 2018;
- A witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant’s door at 12:00 p.m. on March 02, 2018; and
- Direct Request Worksheet showing the rent owing and paid for February and March of 2018.

Analysis

I note that the tenancy agreement indicates that the landlord is “228 East Pender Holdings Limited” whereas the Application for Dispute Resolution indicates the landlord is “228 East Pender St. Holdings Ltd.” (emphasis added). I also note that there is inconsistency in how the landlord name is written throughout the documents submitted with the application. Despite the inconsistencies, I am satisfied that the name on the Application for Dispute Resolution is the name of the landlord as indicated in the tenancy agreement given that the names are virtually identical and it appears that the landlord has simply used different variations of the same name throughout the documents submitted.

I also note that the postal code for the rental unit and tenant’s address is incorrect on both the 10 Day Notice and the Proof of Service Notice to End Tenancy form.

In relation to the 10 Day Notice, section 52 of the *Act* requires that the notice “give the address of the rental unit”. Section 68 of the *Act* allows me to amend a 10 Day Notice that does not comply with section 52 if I am satisfied that:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I am satisfied that the tenant would have known, or should have known, the postal code of his own rental unit. Further, I am satisfied that it is reasonable to amend the 10 Day Notice as the error in the postal code is a small error that could not have caused the tenant any confusion given that the 10 Day Notice accurately sets out the remainder of his address and clearly relates to his rental unit. In the circumstances, I amend the 10 Day Notice to indicate the correct postal code of the rental unit.

In relation to the Proof of Service Notice to End Tenancy form, I am satisfied that the 10 Day Notice was properly served despite the incorrect postal code. The form sets out the remainder of the rental unit address correctly. Further, I am satisfied that the 10 Day Notice was posted to the tenant's door and that the incorrect postal code would have had no bearing on the service of the 10 Day Notice in these circumstances. Therefore, 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 05, 2018, three days after its posting.

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 section 46(5) 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 for unpaid rent owing for February and March of 2018 as of March 15, 2018.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice or the amount noted on the Direct Request Worksheet. If there has been a rent increase, the appropriate Notice of Rent Increase forms must be submitted with the Application for Dispute Resolution to substantiate the claim for the increased rent. In the absence of these forms, I cannot grant a Monetary Order for the amount claimed. As such, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was partially 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.

Pursuant to section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided

with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

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 4, 2018

Residential Tenancy Branch