



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 signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on March 27, 2018, the landlord sent each tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of each 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 each tenant is deemed to have been served with the Direct Request Proceeding documents on April 1, 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 or utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent or utilities 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 a residential tenancy agreement which was signed by the landlord and the tenants on July 3, 2017, indicating a monthly rent of \$1,250.00, due on the first day of each month for a tenancy commencing on July 1, 2017. The addendum to the tenancy agreement stipulates that the tenants would also be responsible for at least 30% of the hydro and gas utilities;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated March 5, 2018 for \$1,250.00 in unpaid rent that was due on March 3, 2018 and for \$210.43 in unpaid utilities following a written demand on February 26, 2018. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent and utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of March 15, 2018;
- A copy of a signed Proof of Service Notice to End Tenancy form, witnessed by "AJ", which indicates that the 10 Day Notice was served personally to Tenant DL at 6:45 PM on March 5, 2018;
- A letter from the landlord dated February 12, 2018 indicating the attached utilities of \$210.43 is owing;
- A copy of a utility bill from Fortis BC for the rental unit dated January 29, 2018 for \$120.43;
- A Direct Request Worksheet showing the rent owing of \$1,250.00 for the month of March 2018; however, a partial payment of \$689.57 was made on March 16, 2018, leaving a balance of \$560.43 outstanding. As well, the landlord indicated that utilities were owed of \$210.43 as per the written demand of February 26, 2018; however, this amount was satisfactorily paid on March 16, 2018;
- A receipt of an electronic transfer of \$900 from Tenant DL to the landlord on March 16, 2018; and
- A copy of email exchanges between Tenant DL and the landlord with respect to discussing payment of the outstanding rent and utilities.

Analysis

Direct Request proceedings are *ex parte* proceedings whereby the opposing party is not invited to participate in the hearing or make any submissions. Without an ability for the tenant to participate, there is a much higher burden placed on the landlord in these types of proceedings, as opposed to 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.

Furthermore, in these types of proceedings, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria. 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. Alternatively, the application may be dismissed.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on March 5, 2018. I also find that the tenants were obligated to pay the monthly rent in the amount of \$1,250.00, as per the tenancy agreement. Based on the evidence before me, I accept that the tenants failed to pay the rent owing in full by March 10, 2018, which is required to cancel the notice under section 46(4) of the *Act*. Furthermore, I find it important to note that the tenant did not dispute the 10 Day Notice within this legislated time period either.

Based on the foregoing, I find that the tenants are conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice of March 15, 2018.

Therefore, as the tenants paid \$900.00 on March 16, 2018, I find that, as per the landlord's calculations, the utilities owing of \$210.43 were paid in full and the balance of the payment of \$689.57 was put towards the outstanding rent. As such, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$560.43, the amount claimed by the landlord 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 grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 grant the landlord a Monetary Order in the amount of \$660.43 for rent owed for March 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 balance of the landlord's application for a monetary award without 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 5, 2018

Residential Tenancy Branch