



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 two signed Proofs of Service of the Notice of Direct Request Proceeding which declare that on May 09, 2018, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that each of the tenants is deemed to have been served with the Direct Request Proceeding documents on May 14, 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 a residential tenancy agreement which was signed by the landlord and Tenant C.W. on August 07, 2017, indicating a monthly rent of \$2,800.00, due on the first day of each month for a tenancy commencing on August 15, 2017;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 24, 2018, for \$5,600.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 May 05, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to Tenant J.W. on April 24, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on April 24, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,800.00 as per the tenancy agreement. I accept the evidence before me that the tenants have 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 05, 2018.

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 of 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.

I find that Tenant J.W. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason the monetary portion of the landlord's application, naming Tenant J.W. as a respondent, is dismissed without leave to reapply.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of

the landlord's application for a monetary claim arising from rent owed for May 2018. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for May 2018, with leave to reapply.

I find that the Direct Request Worksheet shows that the tenant only owes \$4,600.00 in monthly rent as of the date of the 10 Day Notice. (March 2018 for \$1,800.00 and April 2018 for \$2,800.00 = \$4,600.00)

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award against Tenant C.W. in the amount of \$4,600.00, for unpaid rent owing for March 2018 and April 2018 as of May 04, 2018. As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee.

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 section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,700.00 for rent owed for March 2018 and April 2018 as well as for the recovery of the filing fee. The landlord is provided with this Order in the above terms and Tenant C.W. must be served with **this Order** as soon as possible. Should Tenant C.W. 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.

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: May 15, 2018

Residential Tenancy Branch