



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 unpaid utilities as well as a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 30, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding 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 May 05, 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 and/or unpaid 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 tenant on March 10, 2017, indicating a monthly rent of \$550.00, due on the first day of each month for a tenancy commencing on July 01, 2018. The tenant agreement indicates that electricity and water are not included in the monthly rent;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 04, 2018, for \$3,850.00 in unpaid rent and \$1,966.75 in unpaid utilities. The 10 Day Notice provides that the tenant 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 April 15, 2018;
- A copy of a demand letter from the landlord to the tenant, dated March 02, 2018, and served to the tenant on that date, requesting payment of utilities in the amount of \$1,675.71;
- A copy of a demand letter from the landlord to the tenant, dated April 02, 2018, requesting payment of utilities in the amount of \$1,966.75;
- Four copies of utility bills from the municipality the rental unit is located in dated November 30, 2017, for \$1,009.61, January 31, 2018, for \$298.25, February 28, 2018, for \$367.85 and March 29, 2018, for \$291.04 totaling \$470.14;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was left in the tenant's mail box at 7:40 p.m. on April 04, 2018; and
- A Direct Request Worksheet showing the rent and utilities owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on April 07, 2018, three days after being left in the mail box.

I find that the tenant was obligated to pay the monthly rent in the amount of \$550.00, and is responsible for the charges for electricity and water usage as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the rent and utilities 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 17, 2018.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the demand letter dated April 02, 2018, is less than 30 days from the time that the 10 Day Notice was issued to the tenant and

that not enough time has passed to allow the landlord to treat the unpaid utilities for March 29, 2018, as unpaid rent.

For the above reason the monetary portion of the landlord's application concerning unpaid utilities owing, on the bill dated March 29, 2018, in the amount of \$291.04, is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$5,525.71, for unpaid rent owing from October 2017 to April 2018 and utilities owing from June 2017 to February 2018 as of April 26, 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. 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,625.71 for rent owed for unpaid rent owing from October 2017 to April 2018 and utilities owing from June 2017 to February 2018 as well as 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.

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