



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 of the Notice of Direct Request Proceeding which declares that the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail on June 15, 2018. Although the landlord has indicated that the documents were served by way of registered mail, the evidentiary material provided by the landlord demonstrates that the landlord used a similar mail delivery service provided by “FedEx”.

The landlord provided a copy of a FedEx “shipment summary” which provides the details and tracking number associated with the mail service provided by FedEx. The information provided on the summary demonstrates that the FedEx mail item was addressed to the tenant and included the address of the rental unit as the destination address for delivery. The landlord provided an additional document which depicts that the FedEx mail item was received and signed-for by an individual bearing the same first name as the tenant.

The FedEx website provides details associated with the tracking number for the mailed item which demonstrates that the mailed item was received and subsequently signed-for on June 15, 2018. Section 71 of the *Act* provides, in part, the following:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

In the Direct Request process, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89(1) and (2) of the *Act*, which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

Although the landlord did not use a mail service provided by Canada Post, I find that the evidentiary material before me demonstrates that the method of service undertaken by the landlord is sufficiently similar to the registered mail service provided by Canada Post to allow me to exercise my discretion under section 71(2)(b) of *Act* to find that the tenant has been sufficiently served for the purposes of the *Act*. The information provided by the landlord on the FedEx shipment summary demonstrates that the item was addressed to the tenant at the address of the rental unit, and further, similar to the service provided by Canada Post, a signature was provided by the recipient to serve as confirmation of delivery.

Therefore, I find that, in accordance with section 71(2)(b) of the *Act*, the tenant has been served with the served with the Direct Request Proceeding documents on June 15, 2018.

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 and the tenant on March 03, 2018, indicating a monthly rent of \$950.00, due on the first day of each month for a tenancy commencing on March 16, 2018;

- 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 \$1,900.00 for outstanding rent due by June 01, 2018, comprised of the balance of unpaid rent owed for May 2018 and June 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 01, 2018, which the landlord states was served to the tenant on June 02, 2018, for \$950.00 in unpaid rent due on May 01, 2018, with a stated effective vacancy date of June 14, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on June 02, 2018. The Proof of Service form establishes that the service was witnessed by "YK" and a signature for "YK" 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 June 05, 2018, three days after its posting.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, May 01, 2018. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for June 2018 and will therefore make a determination based on the amount of unpaid rent indicated as being due by May 01, 2018, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for June 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the June 01, 2018 Notice issued to the tenant, which alerted the tenant to unpaid rent due by May 01, 2018. According to the evidentiary material provided by the landlord, the amount of unpaid rent due by May 01, 2018 was \$950.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$950.00, 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 \$950.00, comprised of the balance of unpaid rent owed by May 01, 2018 for the month of May 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, June 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$950.00 for unpaid rent owed by May 01, 2018, for the month of May 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 dismiss the landlord's monetary claim for unpaid rent owing for June 2018, with leave to reapply.

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 \$1,050.00 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: June 20, 2018

Residential Tenancy Branch