



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERS INLET ENTERPRISES INC
and [tenant name suppressed to protect privacy]

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 form which declares that on May 30, 2018, the landlord’s agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on June 04, 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 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's agent and the tenant on January 07, 2014, indicating a monthly rent of \$1,200.00, due on the first day of each month for a tenancy commencing on February 01, 2014. The landlord included an addendum to the tenancy agreement, dated August 01, 2017, which indicates that the monthly rent was established to be \$1,330.00 each month;
- A copy of a "Notice of Rent Increase" form, provided to the tenant during the course of the tenancy, which demonstrates that the rent was raised to the current amount of \$1,330.00;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$3,640.00 for outstanding rent, comprised of the balance of unpaid rent owed by May 01, 2018, for the months comprising the period of February 2018 to May 2018. The landlord indicates that a partial payment totaling \$1,360.00 was received on May 02, 2018;
- A copy of a receipt, dated May 02, 2018, which shows that the tenant provided a partial payment, of \$1,360.00, which was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 26, 2018, which the landlord states was served to the tenant on April 26, 2018, for \$3,670.00 in unpaid rent due on April 01, 2018, with a stated effective vacancy date of May 06, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "AA" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence on April 26, 2018. The Proof of Service form establishes that the service was witnessed by "DT" and a signature for "DT" 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 way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on April 29, 2018, three days after it was left in the mail box or mail slot.

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, April 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 May 2018 and will therefore make a determination based on the amount of unpaid rent indicated as being due by April 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 May 2018, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the April 26, 2018 Notice issued to the tenant, which alerted the tenant to unpaid rent due by April 01, 2018. According to the evidentiary material provided by the landlord, the amount of unpaid rent due by April 01, 2018 was \$2,310.00. The evidentiary material provided by the landlord further demonstrates that a partial payment of \$1,360.00 was provided by the tenant on May 02, 2018, resulting in a balance of unpaid rent owed for the period of February 2018 to April 2018, in the amount of \$2,310.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,330.00, and accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$2,310.00, comprised of the balance of unpaid rent owed by April 01, 2018 for the months comprising the period of February 2018 to April 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, May 09, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,310.00 for unpaid rent owed by April 01, 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 May 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 \$2,410.00 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 05, 2018

Residential Tenancy Branch