



Dispute Resolution Services

Page: 1

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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on June 29, 2018, the landlord sent each of the tenants 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 the mailing was sent to Tenant V.T. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant V.T. is deemed to have been served with the Direct Request Proceeding documents on July 4, 2018, the fifth day after their registered mailing.

The landlord did not provide a copy of a Canada Post Customer Receipt or Tracking Number to confirm the registered mail sent to Tenant L.A. For this reason, I will only proceed with the portion of the landlord's application naming Tenant V.T. as a respondent.

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 the tenants indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on August 1, 2016;
- A copy of a utility bill from the City of Surrey for the rental unit dated January 31, 2018 for \$219.38;
- A copy of an e-mail from the landlord to the tenants dated February 27, 2018 and requesting payment of the utilities;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 15, 2018, for \$1,800.00 in unpaid rent and \$219.38 in unpaid utilities. 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 June 26, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenants' mailbox or mail slot at 2:25 pm on June 15, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- An Amendment to an Application for Dispute Resolution form dated June 29, 2018 and requesting a correction to the rental address indicated on the application.

Analysis

The Application for Dispute Resolution submitted by the landlord shows a street number for the tenants' address that is slightly different than the address indicated on the tenancy agreement, the 10 Day Notice, and all other documents submitted with the application. In response to the Amendment requested by the landlord, and in accordance with subsection 64(3)(c) of the *Act*, I have amended the application to match the tenancy agreement and the 10 Day Notice.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant V.T. was deemed served with the 10 Day Notice on June 18, 2018, three days after it was placed in the mailbox or mail slot.

I find that Tenant V.T. was obligated to pay the monthly rent in the amount of \$1,800.00, as per the tenancy agreement.

I accept the evidence before me that Tenant V.T. has 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 Tenant V.T. 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, June 28, 2018.

In this type of matter the landlord must prove that they served the tenant with the utility demand letter and a copy of the utility bill in accordance with section 88 of the *Act*. E-mail is not a recognized method of service under the *Act*.

I find that I am not able to confirm service of the demand letter and utility bill to the tenant, which is a requirement of the Direct Request Proceeding. For this reason, the portion of the landlord's application for a Monetary Order relating to unpaid utilities 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 \$1,800.00, the amount claimed by the landlord, for unpaid rent owing for June 2018 as of June 28, 2018.

As the landlord was partially 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 Tenant V.T. Should Tenant V.T. **and any other occupant** 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 \$1,900.00 for rent owed for June 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant V.T. must be served with **this Order** as soon as possible. Should Tenant V.T. 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 landlord's application for a Monetary Order for unpaid utilities with leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for June 2018 naming Tenant L.A. as a respondent 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: July 05, 2018

Residential Tenancy Branch