



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD
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 July 23, 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 July 28, 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's agent and the tenant, indicating a monthly rent of \$2,690.00, due on the first day of each month for a tenancy commencing on September 01, 2017;
- A Direct Request Worksheet, with an accompanying rental ledger, showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$3,183.29.00 for outstanding rent and utilities. The landlord indicates that a balance of unpaid rent is owed by July 01, 2018, in the amount of \$2,690.00, and unpaid utilities charges owed in the amount of \$493.29;
- A written demand for payment of utilities, in the form of demand letters dated November 27, 2017 and March 27, 2018, both of which included attached utility bills provided to the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 05, 2018, which the landlord states was served to the tenant on July 05, 2018, for \$2,690.00 in unpaid rent due on July 01, 2018, with a stated effective vacancy date of July 15, 2018. The Notice also alerts the tenant to unpaid utility charges owed in the amount of \$493.29, due by July 01, 2018;
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the rental unit on July 05, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are 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 July 08, 2018, three days after its posting.

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 for 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request

process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 30 Day Written Demand to Pay Utilities. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities" (form RTB – 34) to demonstrate that the 30 Day Written Demand to Pay Utilities was served to the tenant in a manner permitted under the *Act*.

If the landlord wishes to recover unpaid utility charges and treat unpaid utility charges as unpaid rent as part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB – 34) to prove that the 30 Day Written Demand to Pay Utilities was served to the tenant in accordance with the *Act*. I find that the landlord has not provided a completed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities form to prove that the 30 Day Written Demand to Pay Utilities was served to the tenant in accordance with the *Act*.

I find that the landlord has not demonstrated that service of the 30 Day Written Demand to Pay Utilities was witnessed and completed in accordance with the *Act*, nor has the landlord provided a completed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities form, which includes a name and signature of a witness to confirm service of the 30 Day Written Demand to Pay Utilities, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the foregoing, I find that I am not able to confirm service of the 30 Day Written Demand to Pay Utilities to the tenant, which is a requirement of the Direct Request process.

I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,690.00, 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 \$2,690.00, comprised of the balance of unpaid rent owed by July 01, 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, July 18, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,690.00 for unpaid rent owed by July 01, 2018, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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(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 \$2,790.00 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: August 02, 2018

Residential Tenancy Branch