



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 a monetary Order.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on July 25, 2018, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on July 30, 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 tenants, indicating a monthly rent of \$936.00 due on the first day of each month for a tenancy commencing on April 01, 2018. The tenancy agreement includes a term stating that the tenants are to pay 30% of the utilities;
- A Direct Request Worksheet showing the utilities owing during the portion of this tenancy in question, on which the landlord indicates that there are unpaid utilities charges owing in the amount of \$231.15, which were due on April 17, 2018;
- A written demand for payment of utilities, in the form of a letter from the landlord, dated April 17, 2018, addressed to the tenants, in which the landlord asks that the tenants pay their portion of utilities owed in the amount of \$231.35;
- A copy of the Proof of Service of the Written Demand to Pay Utilities, showing that the landlord's agent served the Written Demand to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants' residence on April 17, 2018. The Proof of Service form establishes that the service was witnessed by "TV" and a signature for "TV" is included on the form;
- Copies of utility bills;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) dated June 19, 2018, which the landlord states was served to the tenants on June 19, 2018, for \$231.35 in unpaid utilities owed by April 17, 2018 with a stated effective vacancy date of June 29, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of posting it to the door of the rental unit on June 19, 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 tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants 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 22, 2108, three days after its posting.

Section 46(6) of the *Act*, provides, in part, the following:

If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the tenancy agreement included a term which demonstrates that the tenants were to required to pay 30% of the amount owed for the utilities. The landlord provided a written demand letter to the tenant for payment of the outstanding utility bills, and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid utility (gas bill) as unpaid rent in accordance with subsection 46(6) of the *Act*.

I find that the tenants were obligated to pay monthly rent in the amount of \$936.00, and were required to pay 30% of the amount owed for the utilities, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding charges arising from the amount of unpaid utilities owed by the tenants, in the amount of \$231.35, which was due by April 17, 2018.

I accept the landlord's undisputed evidence and find that the tenants did not pay the utility charges 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 tenants are 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 02, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$231.35 for unpaid utility charges owed by April 17, 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(s). 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 \$331.35 for unpaid rent and utilities, 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(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 01, 2018

Residential Tenancy Branch