



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on September 26, 2018, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on October 1, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and Tenant L.M. on August 6, 2017, indicating a monthly rent of \$1,600.00, due in bi-monthly payments of \$800.00 on the first and fifteenth day of each month for a tenancy commencing on September 1, 2017;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,600.00 to the current monthly rent amount of \$1,664.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 11, 2018, for \$832.00 in unpaid rent. 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 September 24, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 3:00 pm on September 11, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet noted that \$700.00 of the \$832.00 identified as owing in the 10 Day Notice was paid on September 14, 2018.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on September 14, 2018, three days after its posting.

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be "signed and dated by both the landlord and the tenant."

I find that Tenant L.C. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the application naming Tenant L.M. as a respondent.

I find that Tenant L.M. was obligated to pay the bi-monthly rent in the amount of \$832.00, as per the tenancy agreement and the Notice of Rent Increase.

I accept the evidence before me that Tenant L.M. 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 L.M. is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 24, 2018.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlords' application for a monetary claim arising from rent owed for the period of September 15 2018 to September 30, 2018. For this reason, I dismiss the portion of the landlords' monetary claim for unpaid rent owing for the period of September 15, 2018 to September 30, 2018, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$132.00, the amount claimed by the landlords, for unpaid rent owing for the period of September 1, 2018 to September 14, 2018 as of September 23, 2018.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant L.M. Should Tenant L.M. **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 landlords a Monetary Order in the amount of \$232.00 for rent owed for the period of September 1, 2018 to September 14, 2018 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant L.M. must be served with **this Order** as soon as possible. Should Tenant L.M. 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 landlords' application for a Monetary Order for unpaid rent owing for the period of September 1, 2018 to September 14, 2018 naming Tenant L.C. as a respondent without leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid rent owing for the period of September 15, 2018 to September 30, 2018 with 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: October 02, 2018

Residential Tenancy Branch