



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

The landlord submitted three signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on October 17, 2018, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had the tenants and a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on October 17, 2018.

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 on September 5, 2018 and Tenant M.F. and Tenant L.B. on September 6, 2018, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on September 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 3, 2018, for \$550.00 in unpaid rent and \$150.00 in unpaid damage deposit. 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 October 13, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 9:45 am on October 3, 2018; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on October 3, 2018.

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 M.B. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the monetary portion of the landlord's application naming Tenant M.B as a respondent is dismissed without leave to reapply.

However, I find that Tenant M.F. and Tenant L.B. were obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

I accept the evidence before me that Tenant M.F. and Tenant L.B. have 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 M.F. and Tenant L.B. are 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, October 13, 2018.

I note that the only monetary award available to a landlord by way of the direct request process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to a damage deposit in the amount of \$150.00, I would not be able to consider this aspect of the landlord's claim through the direct request process.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$550.00, the amount claimed by the landlord, for unpaid rent owing for October 2018 as of October 12, 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 M.F. and Tenant L.B. Should Tenant M.F., Tenant L.B. **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 \$650.00 for rent owed for October 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 M.F. and/or Tenant L.B. must be served with **this Order** as soon as possible. Should Tenant M.F. and/or Tenant L.B. 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 damage deposit without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent naming Tenant M.B. 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: October 22, 2018

Residential Tenancy Branch