



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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 October 03, 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 October 08, 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*?

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 \$1,045.00 due on the first day of the month for a tenancy commencing on October 15, 2005. The tenancy agreement indicates that the landlord cooperates with various governmental agencies and/or a provincial housing commission with respect to subsidized housing, and that for eligible tenants, the rent is related to the tenant's income. The provincial housing commission calculates the tenant's portion of the rent contribution based on an application for rent subsidy. The tenancy agreement provides that the tenant is to provide income information for the purpose of qualifying for subsidized housing and to calculate a rent contribution subsidy;
- A copy of a letter, dated November 16, 2017, in which the landlord alerts the tenant to provide information required to calculate a rent subsidy. The tenant is further notified that the monthly rent would increase to a market rate of \$1,441.00 as of April 01, 2018 if the requested information was not provided;
- A copy of a letter, dated January 04, 2018, in which the landlord notifies the tenant that the monthly rent for the rental unit would be adjusted to a market rate of \$1,441.00 each month, effective April 01, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed by September 01, 2018 in the amount of \$5,763.00, comprised of the balance of unpaid rent owed for the months encompassing the period of May 2018 to September 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 10, 2018, which the landlord states was served to the tenant on September 10, 2018, for \$5,763.00 in unpaid rent due on September 01, 2018, with a stated effective vacancy date of September 22, 2018; and
- 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 registered mail on September 10, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 relevant documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is

deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on September 15, 2018, five days after its registered mailing.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,441.00, and accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by September 01, 2018, in the amount of \$5,763.00, comprised of the balance of unpaid rent owed for the months encompassing the period of May 2018 to September 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, September 25, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$5,763.00 for unpaid rent owed by September 01, 2018, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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 section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$5,763.00 for unpaid rent. 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: October 12, 2018

Residential Tenancy Branch