



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPU-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 which declares that on September 27, 2018, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “LW” and a signature for “LW” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on September 27, 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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,400.00 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 tenant is to pay one-third of the hydro bill;

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$600.00, comprised of the balance of unpaid rent due by September 01, 2018. The landlord indicates that there are unpaid utilities charges owing in the amount of \$120.00, which were due on July 30, 2018;
- A written demand for payment of utilities, in the form of a letter from the landlord, dated July 30, 2018, addressed to the tenant, in which the landlord asks that the tenant pay his portion of utilities owed in the amount of \$120.00 by September 01, 2018;
- A copy of the Proof of Service of the Written Demand to Pay Utilities, showing that the landlord served the Written Demand to the tenant by way of personal service via hand-delivery on July 30, 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;
- A copy of a hydro bill;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 05, 2018, which the landlord states was served to the tenant on September 05, 2018, for \$1,000.00 in unpaid rent due on September 01, 2018, with a stated effective vacancy date of September 16, 2018. The Notice indicates that there are unpaid utility charges owed in the amount of \$120.00 by September 01, 2018; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenant by way of personal service via hand-delivery on September 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 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 and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on September 05, 2018.

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 tenant is required to pay one-third of the hydro bill. The landlord provided a written demand letter to the tenant for payment of the outstanding utility charges, and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid utility (hydro bill) as unpaid rent in accordance with subsection 46(6) of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,400.00, and accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$600.00, comprised of the balance of unpaid rent owed by September 01, 2018 and has not provided payment of the unpaid utility charges owed by September 01, 2018.

I accept the landlord's undisputed evidence and find that the tenant did not pay the unpaid rent and 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, September 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the September 05, 2018 Notice served to the tenant for the balance of unpaid rent and utility charges owed by September 01, 2018.

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.

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