



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 November 2, 2018, the landlord 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 November 7, 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 (the “**Agreement**”) which was signed by the landlord, HFBC Housing Foundation, and the tenant on May 16, 2016, indicating a monthly economic rent of \$902.00, due on the first day of each month for a tenancy commencing on May 17, 2016;

- A copy of a Certificate of Change of Name certifying that HFBC Housing Foundation changed its name to Brightside Community Homes Foundation on September 7, 2017;
- A copy of a letter dated April 3, 2018 from the landlord to the tenant which sets out the rent as \$600.00;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$600.00 for outstanding rent, comprised of the balance of unpaid rent due by November 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated October 10, 2018, which the landlord states was served to the tenant on October 10, 2018, for \$600.00 in unpaid rent due on October 1, 2018, with a stated effective vacancy date of October 22, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on October 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 October 15, 2018, five days after its registered mailing.

I note two irregularities with the Agreement:

- 1) The Agreement does not list the city where the premises in question are located. It lists only a street address, and the name of the building.
- 2) The Agreement does not explicitly list HFBC Housing Foundation as the landlord. Rather HFBC Housing Foundation appears on the letterhead, in the footer, and as part of a header entitled “Additional Terms Applicable to HFBC Housing Foundation Tenants”.

Despite these irregularities, I find that:

- 1) The premises is located in Vancouver, as:
 - a. the name of the building is the same as a well-known Vancouver neighbourhood which contains the street address of the premises; and
 - b. all other documents in evidence which contain the premises' street address list the city as Vancouver.
- 2) HFBC Housing Foundation is the landlord, as:
 - a. the Agreement refers tenants as "HFBC Housing Foundation tenants"; and
 - b. the file name of the Agreement, found in the footer is "HFBC Housing Foundation Standard Tenancy Agreement".

I accept the landlord's evidence that HFBC Housing Foundation changed its name to Brightside Community Homes Foundation. As such, Brightside Community Homes Foundation has standing to bring this application, despite not being named landlord on the Agreement.

I find that the tenant was obligated to pay monthly rent in the amount of \$600.00, as established in the April 3, 2018 letter. The landlord has not presented evidence as to the reason for the decrease in rent from \$902.00 (as per the Agreement) to \$600.00. However, as the landlord only seeks \$600.00, this evidence is not required.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$600.00, comprised of rent owed for the month of October 2018 owed as of November 1, 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 sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, October 25, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$600.00 for unpaid rent owed for October 2018 as claimed on the landlord's Application for Dispute Resolution by Direct Request dated of November 1, 2018.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 \$600.00 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: November 09, 2018

Residential Tenancy Branch