Dispute Resolution Services

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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 7, 2018, the landlord served the tenants with the Notices of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants had been deemed served with the Direct Request Proceeding documents on November 12, 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*?

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 and one of the tenants on February 1, 2018, indicating a monthly rent of $950.00, due on the first day of each month for a tenancy commencing on September 1, 2017.

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of $1,140.00 for outstanding rent, comprised of the balance of unpaid rent for the months of August 2018, September 2018, and October 2018.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 3, 2018 which the landlord states was served to the tenants on October 3, 2018, for $1,140.00 in unpaid rent due on October 01, 2018, with a stated effective vacancy date of October 16, 2018 ; and

- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on October 3, 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 relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting to the door, the tenants were deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants were deemed served with the Notice on October 6, 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 L.S. 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 L.S. as a respondent is dismissed without leave to reapply.

However, I find that Tenant K.S. was obligated to pay monthly rent in the amount of $950.00, as established in the tenancy agreement. I accept the evidence before me that Tenant K.S. has failed to pay rental arrears in the amount of $1,140.00 comprised of the balance of unpaid rent owed by November 1, 2018.

I accept the landlord's undisputed evidence and find that Tenant K.S. 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 Tenant K.S. is presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, October 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of $1,140.00 for unpaid rent owing for August 2018, September 2018, and October 2018 as of November 1, 2018.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the $100 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 K.S. Should Tenant K.S. 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 find that the landlord is entitled to a monetary Order in the amount of $1,240.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and Tenant K.S. must be served with **this Order** as soon as possible. Should Tenant K.S. 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.

I dismiss the landlord's application for a Monetary Order naming Tenant L.S. 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: November 14, 2018

Residential Tenancy Branch