



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

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on November 16, 2018, the landlords served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlords 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 landlords, 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 21, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the Act?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on July 3, 2017, indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on July 3, 2017;

- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords set out their basis for a monetary claim in the amount of \$2,700.00 for outstanding rent, comprised of the balance of unpaid rent owed for the months encompassing the period of October 1, 2018 and November 1, 2018 ;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 2, 2018 , which the landlords state was served to the tenant on November 2, 2018 , for \$2,700.00 in unpaid rent due on November 1, 2018 , with a stated effective vacancy date of November 12, 2018 ; and
- A copy of the Proof of Service of the Notice form asserting that the landlords served the Notice to the tenant by way of personal service via hand-delivery on November 2, 2018 . The Proof of Service form states 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 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 landlords alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlords. I find that the following deficiency in the materials exists:

- 1) On the proof of service of the Notice form, the witness “HH” attests that they observed *themselves* serving the Notice, rather than the individual (“NHH”) the form indicates served the Notice.

I find that the discrepancy on the Notice is an oversight on the part of the landlords, and not fatal to question of proper service of the Notice. The proof of service form indicates the identity of the individual who served the Notice. In light of this, I find it unlikely that “HH” would have intentionally attested that they observed themselves serving the Notice. Accordingly, I find that the Notice was properly served.

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 November 2, 2018.

On the landlords’ Application for Dispute Resolution by Direct Request, the landlords provide that the tenant provided a partial payment of \$900.00 on October 19, 2018 resulting in a balance of unpaid rent owed in the amount of \$2,700.00 (i.e. the balance of rent owed for October 2018 and November 2018).

I find that the tenant was obligated to pay monthly rent in the amount of \$1,800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by November 1, 2018 , in the amount of \$2,700.00, comprised of the balance of unpaid rent owed for the months comprising the period of October 2018 and November 2018.

I accept the landlords' 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 effective date of the Notice, November 12, 2018 .

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$2,700.00 for unpaid rent owed by November 1, 2018 as claimed on the landlords' Application for Dispute Resolution by Direct Request submitted on November 15, 2018.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords 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 sections 67 and 72 of the Act, I find that the landlords are entitled to a monetary order in the amount of \$2,800.00 for unpaid rent owing for October 2018 and November, and for the recovery of the filing fee for this application. The landlords are 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 22, 2018

Residential Tenancy Branch