



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 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 19, 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 24, 2018, the fifth day after their registered mailing.

Issues 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 the tenant on August 26, 2014 , indicating a monthly rent of \$875.00, due on the first day of each month for a tenancy commencing on August 29, 2014 ;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed by November 1, 2018 in the amount of \$3,200.00, comprised of the balance of unpaid rent owed for an unspecified period of time;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**October Notice**”) dated October 3, 2018, for \$2,775.00 in unpaid rent due on October 1, 2018, with a stated effective vacancy date of October 13, 2018
- A signed and witnessed copy of the Proof of Service of the October Notice showing that the landlord served the October Notice to the tenant by way of posting it to the door of the rental unit on October 3, 2018. The Proof of Service form states that the service of the October Notice was witnessed and a name and signature for the witness are included on the form;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**November Notice**”) dated November 15, 2018 , for \$3,200.00 in unpaid rent due on November 1, 2018 , on which the landlord does not state when it was served on the tenant, and with a stated effective vacancy date of November 15, 2018 ; and
- An unsigned copy of the Proof of Service of the November Notice showing that the landlord served the November Notice to the tenant by way of posting it to the door of the rental unit on November 6, 2018 . The Proof of Service form states that the service of the November 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.

Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence provided by the landlord. I find the following deficiencies in the service document exist:

- 1) The Proof of Service of the November Notice form is not signed by the landlord;
- 2) The November Notice does not indicate when it was served on the tenant;
- 3) The November Notice is dated November 15, 2018, whereas on the Proof of Service of the Notice form, the witness attests that the landlord served the November Notice on November 6, 2018;

Section 52 of the Act provides the following requirements regarding the form and content of notices to end tenancy:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and **dated** by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice [...]

I interpret this section to mean correctly dated. For it to be otherwise would make little sense.

I find that the November Notice was improperly dated as the witness attests the November Notice was served November 6, 2018 and the landlord failed to indicate on the November Notice when it was served. I find that it is more likely that the Landlord made an error when preparing the November Notice than the witness made an error in stating when the November Notice was served. I make this finding on the basis that the landlord has demonstrated a lack of care when preparing both the November Notice (failing to complete the service section) and the proof of service of the November Notice form (failing to sign it).

For the forgoing reasons, I find that the November Notice is of no effect.

As to the October Notice, in accordance with sections 88 and 90 of the Act, I find that the tenant was deemed served with the October Notice on October 6, 2018, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$875.00, as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the Act and did not dispute the October 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 October Notice, October 16, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession on the basis of the October Notice as of November 19, 2018.

Additionally, I note the following evidentiary issues:

- 1) The direct request worksheet states that:
 - a. as of October 1, 2018, the tenant owed \$2,775.00;
 - b. on October 12, 2018, the tenant made a partial payment of rental arrears of \$500.00;
 - c. as of November 1, 2018, the tenant owed \$3,200.00.

It does not set out how the October figure was arrived at (i.e. for what months the tenant is in arrears, and what payments were made during that time). This is required in order to be able to accurately assess the amount of rent due and owing; and

- 2) On the direct request worksheet, between October 2018 and November 2018, the amount of rent due and owing increased by \$925.00, and not by the amount proscribed by the tenancy agreement (\$875.00). This is suggestive of a rent increase. However, the landlord has provided no evidence of such an increase.

I find that I am not able to confirm the precise amount of rent owing, and for this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 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 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 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

Dated: November 26, 2018

Residential Tenancy Branch