



Dispute Resolution Services

Page: 1

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 20, 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 25, 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:

- An undated copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$700.00, due on the first day of each month for a tenancy commencing on July 1, 2017 ;

- A Direct Request Worksheet showing the rent owing 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 \$1,600.00, comprised of the balance of unpaid rent owed for the months encompassing the period of September 2018 to November 2018;
- A copy of a ledger showing the rent owing and paid for the duration of the tenancy, which supplements the Direct Request Worksheet;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 6, 2018 , which the landlord states was served to the tenant on November 6, 2018 , for \$1,600.00 in unpaid rent due on November 1, 2018 , with a stated effective vacancy date of November 16, 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 November 6, 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 landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all relevant documentary evidence provided by the landlord. In accordance with section 88 of the Act, I find that the tenant has duly received the Notice on November 6, 2018 .

I find that the tenant was obligated to pay monthly rent in the amount of \$700.00, as established in the tenancy agreement.

However, upon review of the direct request worksheet and the ledger, it appears that, as of July 1, 2018 the monthly rent was increased to \$725.00. The landlord has submitted no evidence in support of such an increase. Accordingly, I find that for the purposes of this application, the tenant was obligated to pay monthly rent of \$700.00.

Upon review of the ledger, it appears that the tenant has been habitually late in making his rent payments, and, almost from the inception of the tenancy has been delinquent for some amount of the rent owed. He has also made numerous partial payments of rent throughout the course of the tenancy, which often did not total the full amount of rent owed.

I accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by November 1, 2018 . However, from the amount claimed and set out in the ledger (\$1,600.00) I deduct \$125.00, representing the unproven increase in monthly rent of \$25.00 claimed by the landlord since July 1, 2018. I find that the balance of rental arrears the tenant has failed to pay is \$1,475.00, comprised of the balance of unpaid rent owed for the duration of the tenancy.

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 section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, November 16, 2018 .

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,475.00, the amount of the monetary claim established by the landlord on the Application for Dispute Resolution by Direct Request for unpaid rent owing for the duration of the tenancy , as of November 16, 2018 , the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

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 sections 67 and 72 of the Act, I find that the landlord is entitled to a monetary Order in the amount of \$1,575.00 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 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.

I dismiss the balance of the landlord's application for a monetary order 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 26, 2018

Residential Tenancy Branch