



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM – DR, FFL

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2018 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent and to recover the filing fee paid for this Application, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the tenant and a corporate landlord on June 2, 2017 for a fixed term tenancy beginning on June 15, 2017 for the monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$500.00 was paid;
- A copy of a Service Agreement between the landlord and a number company taking over responsibility for acting as the landlord's agent at this residential property; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 17, 2018 with an effective vacancy date of October 31, 2018 due to \$1,480.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the months of July and October 2018 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on October 18, 2018. The landlord also submitted a Proof of Service Notice to End Tenancy that states the Notice to End Tenancy was served on October 19, 2018 and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. However, the landlord submitted a Monetary Order Worksheet that indicates that the tenant made payments on September 12 and October 11, 2018. While the landlord does indicate the tenant also has not paid rent for the month of November 2018, they do not indicate if any payments for rent have been paid for the month of August 2018.

Analysis

Direct Request proceedings are conducted when a landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant(s) has not filed an Application for Dispute Resolution seeking to cancel the Notice within 5 days of receiving the Notice. The proceeding is conducted *ex parte* and based solely on the paperwork provided by the applicant landlord.

Because the hearing is conducted without the benefit of having a participatory hearing in which I might question either of the parties if something is unclear in the paperwork, all documents submitted must be complete and clear.

As the landlord has submitted, on the 10 Day Notice to End Tenancy for Unpaid Rent, that they served the Notice on October 18, 2018 and on the Proof of Service Notice to End Tenancy that the Notice was served on October 19, 2018 it is unclear to me as to what date the Notice to End Tenancy was actually served. As such, I find this Application is not suitable for the Direct Request process and that a participatory hearing is necessary.

Conclusion

Based on the above, I adjourn this matter to be heard at a participatory hearing.

Notices of the time and date of the participatory hearing are included with this Decision for the landlord to serve to the tenant within 3 days of receipt of this Decision. The landlord must also serve a copy of this Decision to the tenant.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the participatory hearing.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

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 28, 2018

Residential Tenancy Branch