



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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 23, 2018, the landlord served the tenants with the Notices of Direct Request Proceeding via registered mail. The landlord provided copies of the Canada Post customer receipts containing the tracking numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on November 28, 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 evidentiary material including:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on July 23, 2012 , indicating a monthly rent of \$860.00, due on the first day of each month for a tenancy commencing on August 1, 2012;
- Copies of Notice of Rent Increase forms for the years 2015 to 2018 the most recent setting the monthly rent to \$976.00 per month effective November 1, 2018;
- 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 basis for a monetary claim in the amount of \$45.00 for outstanding rent, comprised of:
 - a pre-payment of rent due by November 1, 2018 in the amount of \$831.00 on October 24, 2018;
 - the balance of unpaid rent due by November 1, 2018 (\$145.00); and
 - a payment towards the balance of unpaid due by November 1, 2018 in the amount of \$100.00 on November 13, 2018.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated November 2, 2018 for \$145.00 in unpaid rent due on November 1, 2018 , with a stated effective vacancy date of November 15, 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 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 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 documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are 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 are deemed to have received the Notice on November 5, 2018 , three days after its posting.

On the landlord’s Application for Dispute Resolution by Direct Request, the landlord provides that subsequent to receipt of the Notice, the tenants provided a partial payment of \$100.00 on November 13, 2018, resulting in a balance of unpaid rent owed in the amount of \$145.00.

I find that the tenants were obligated to pay monthly rent in the amount of \$976.00, as established in the tenancy agreement and the notices of rent increase. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$45.00, comprised of the balance of unpaid rent owed by November 1, 2018.

I accept the landlord's undisputed evidence and find that the tenants 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 tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, November 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$45.00 for unpaid rent owed by November 1, 2018 as claimed on the landlord's Application for Dispute Resolution by Direct Request.

As the landlord was 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 tenants. Should the tenants 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 \$145.00 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 tenants must be served with **this Order** as soon as possible. Should the tenants 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 29, 2018

Residential Tenancy Branch