



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 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 by the landlord 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 30, 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 for the cost of this Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on May 30, 2018 for a nine-month fixed term tenancy beginning on June 1, 2018 for the monthly rent of \$2,045.00 plus \$150.00 for parking due on the 1st of each month and a security deposit of \$1,022.50 was paid;
- A copy of a Tenant Ledger that shows the tenant's rent and parking fee cheque for the month of November 2018 was returned and the landlord charged an NSF fee of \$25.00; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 15, 2018 with an effective vacancy date of November 26, 2018 due to \$2,220.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent and parking owed for the month of November 2018 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by placing in the mailbox for the rental unit door on November 13th at 10:40 p.m. and that this service was witnessed by a third party. I note, however, that the witness declaration states that they witnessed the landlord serving the Notice to End Tenancy on November 15, 2018.

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.

Analysis

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. While the landlord's declaration indicates the Notice was served on November 13, 2018 I note that the Notice was dated November 15, 2018 and the witness's declaration indicated they saw the landlord serve the Notice on November 15, 2018. As such, I find the landlord made a clerical error on their declaration and accept service was performed on November 15, 2018.

The notice is deemed to have been received by the tenant on November 18, 2018 and the effective date of the notice is amended to November 28, 2018, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

The landlord claims \$2,200.00 as unpaid rent. However, as per the tenancy agreement \$150.00 of that is for parking subject to a separate parking agreement and \$25.00 is a fee for having the rent and parking fee cheque returned as insufficient funds. I find that the parking charges and NSF fees are not a part of the rent as outlined as separate fees in the tenancy agreement. As such, I find the landlord is only entitled to claim, through the Direct Request process, the actual amount of rent unpaid or \$2,045.00. I dismiss the portion of the landlord's claim for parking and late fees with leave to reapply.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,145.00** comprised of rent owed in the amount of \$2,045.00 and the \$100.00 filing fee.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: December 05, 2018

Residential Tenancy Branch