



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 landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 27, 2018 the landlords served the tenants with the Notice of Direct Request Proceeding via registered mail. The landlords provided copies of the Canada Post Customer Receipts containing the Tracking Numbers 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 landlords, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on December 2, 2018.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords on July 1, 2014 and by one tenant on July 7, 2014, and the other tenant on July 5, 2014, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on July 1, 2014;
- A Direct Request Worksheet, on which the landlords establish a monetary claim in the amount of \$3,500.00 for outstanding rent for November and May, comprised of the balance of unpaid rent due by October 1, 2018.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 16, 2018, which the landlord states was served to the tenants on October 16, 2018 for \$2,800.00 in unpaid rent due on October 1, 2018 with a stated effective vacancy date of October 26, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenants by way of posting it to the door of the rental unit on October 16, 2018. The Proof of Service form establishes 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 have 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 landlords 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 October 19, 2018, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,500.00 as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period

Based on the foregoing, I find that the tenants are 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 10 Day Notice, October 29, 2018.

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 find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice, or the amount listed on the Monetary Worksheet. I find that \$2,800.00 is listed as owing on the 10 Day Notice, \$2,500.00 is the monthly rent and \$3,500.00 is listed on the Direct Request Worksheet. In order to claim for additional rent, the Direct Request Worksheet must clearly show any additional months that the tenant still owes rent for and any partial payments in rent in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement.

I find that I am not able to determine the total amount of rent owing to the landlords. For this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing as of October 1, 2018.

I dismiss the landlords' application for a monetary Order for unpaid rent, with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for a monetary Order for unpaid rent, with leave to reapply.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 7 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are 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: December 05, 2018

Residential Tenancy Branch