



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Preliminary Matters

I note that the rental address on the Application for Dispute Resolution submitted by the landlord does not include the street name. The correct and complete rental address is shown on the tenancy agreement signed by both parties, the 10 Day Notice served to the tenant, and all other documents submitted with the Application. Section 64(3)(c) of the *Act* allows me to amend the application to match the tenancy agreement and the 10 Day Notice, which I have done.

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 which declares that on December 13, 2018, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on December 13, 2018.

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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 25, 2017, indicating a monthly rent of \$1,000.00, due on the first day of each month for a tenancy commencing on February 25, 2017;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,000.00 to the current monthly rent amount of \$1,040.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 2, 2018, for \$540.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 12, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 2:55 pm on December 2, 2018;
- A copy of a letter from the landlord to the tenant dated December 13, 2018, indicating that a payment of \$540.00, paid by the tenant on December 11, 2018, was accepted “for use and occupancy only”; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on December 2, 2018.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,040.00, as per the tenancy agreement and the Notice of Rent Increase.

I accept the evidence before me that the tenant has failed to pay the rent owed in full by December 7, 2018, within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, December 12, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of December 10, 2018.

I find that the tenant has paid the balance owing of rent for December 2018 and that the landlord has accepted this payment for use and occupancy of the rental unit. For this reason the landlord's application for a Monetary Order for unpaid rent owing for December 2018 is dismissed without leave to reapply.

For this same reason, I find that the tenant is entitled to remain in the rental unit until the end of December 2018 as they have paid for the use and occupancy of that period.

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 **on December 31, 2018, 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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: December 14, 2018

Residential Tenancy Branch