



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 Proofs of Service of the Notices of Direct Request Proceeding which declare that on December 11, 2018, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on December 16, 2018, the fifth day after their registered mailing.

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 tenants on September 22, 2018, indicating a monthly rent of \$1,450.00, due on the first day of each month for a tenancy commencing on September 22, 2018;

- A copy of a City utility bill for the rental unit dated November 8, 2018 for \$186.57;
- A copy of a utility bill from Telus for the rental unit dated November 1, 2018 for \$90.00 in internet charges;
- Two copies of utility bills from BC Hydro for the rental unit dated October 26, 2018 and November 27, 2018 for \$205.00 each under an equal payment plan;
- A copy of a demand letter from the landlord to the tenants, dated November 2, 2018, requesting payment of utilities in the amount of \$187.48 by December 1, 2018;
- A copy of a witnessed Proof of Service Written Demand to Pay Utilities form which indicates that the utility demand letter was personally served to the tenants at 4:00 (a.m. or p.m. not indicated) on November 2, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the November 10 Day Notice) dated November 2, 2018, for \$670.00 in unpaid rent and \$187.48 in unpaid utilities. The November 10 Day Notice provides that the tenants 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 November 11, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the December 10 Day Notice) dated December 2, 2018, for \$1,450.00 in unpaid rent and \$227.12 in unpaid utilities. The December 10 Day Notice provides that the tenants 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 10, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Utility 10 Day Notice) dated December 2, 2018, for \$187.48 in unpaid utilities. The Utility 10 Day Notice provides that the tenants had five days from the date of service to pay the utilities in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 10, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the December 10 Day Notice and the Utility 10 Day Notice were personally served to the tenants at 3:00 (a.m. or p.m. not indicated) on December 2, 2018; 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 I find that the landlord has not submitted a copy of a Proof of Service Notice to End Tenancy form to establish service of the November 10 Day Notice to the tenants. Therefore, I cannot consider the portion of the landlord's application regarding the November 10 Day Notice.

However, in accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the December 10 Day Notice and the Utility 10 Day Notice on December 2, 2018.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,450.00, as per the tenancy agreement.

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

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,450.00, the amount claimed by the landlord, for unpaid rent owing for December 2018 as of December 10, 2018.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the tenants were duly served with the 10 Day Notice on November 2, 2018.

I find that the thirtieth day for the tenants to have paid the utilities was December 2, 2018. I further find that the earliest date that the landlord could have issued a 10 Day Notice for unpaid utilities was December 3, 2018.

I find that the landlord issued the Utility 10 Day Notice and the December 10 Day Notice on December 2, 2018, and that not enough time has passed to allow the landlord to

treat the unpaid utilities as unpaid rent. For this reason the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

I note that the only monetary award available to a landlord by way of the direct request process is for unpaid rent and unpaid utilities. As the landlord has also sought a monetary award for matters relating to rental loss, junk removal, damages to a washer and dryer, and loss of employment income, I would not be able to consider these aspects of the landlord's claim through the direct request process.

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 **two days after service of this Order** on the tenant(s). 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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,550.00 for rent owed for December 2018 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 balance of the landlord's application for a Monetary Order with 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 17, 2018

Residential Tenancy Branch