



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

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 form which declares that on January 18, 2019, the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided copies of the Canada Post customer receipts containing the tracking numbers to confirm these 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 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 January 23, 2019, 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

I have reviewed all written submissions and evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlord submitted evidentiary material including:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on June 20, 2018 , indicating a monthly rent of \$1,600.00 and a monthly parking fee of \$30.00, due on the first day of each month for a tenancy commencing on July 1, 2018;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord sets out its claim for unpaid rent owed in the amount of \$1,630.00, comprised of the balance of unpaid rent and fees due by January 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) dated January 2, 2019 for \$1,630.00 in unpaid rent due on January 1, 2019, with a stated effective vacancy date of January 16, 2019; 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 January 2, 2019. 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 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 (i.e. by January 10, 2019) 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 January 5, 2019, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,600.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,600.00, comprised of the balance of unpaid rent owed by January 1, 2019.

The landlord also claims for \$30, representing unpaid parking fees due January 1, 2019 (these fees are separate from rent, as set out in the tenancy agreement). Section 46 of the Act states:

Landlord's notice: non-payment of rent

46 (1) 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.

This section forms the basis for the landlord's application. The section does not reference unpaid fees as a basis for giving a notice to end tenancy. Accordingly, I find that the landlord is not entitled to compensation for unpaid parking fees. The landlord may want to consider other dispute resolution avenues available to him to recover this amount.

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, January 16, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,600.00 for unpaid rent owed by January 1, 2019 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 in, 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 \$1,700.00 for unpaid rent, and for the recovery of the filing fee for this application. Should the tenants fail to comply with this Order, this Order may be filed in, and enforced as an Order of, the Small Claims Division of the Provincial Court.

The landlord is provided with these Orders in the above terms and must serve the tenants with these Orders as soon as possible.

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: January 24, 2019

Residential Tenancy Branch