



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD and
[tenant name suppressed to protect privacy]

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 landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 24, 2019, 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 January 29, 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

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on March 7, 2014, indicating a monthly rent of \$765.00, due on the first day of each month for a tenancy commencing on April 1, 2014;
- Three copies of Notice of Rent Increase forms showing the rent being increased from \$775.00 to the monthly rent amount of \$863.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 16, 2018, for \$521.00 in unpaid rent. The 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 October 28, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 11:35 am on October 16, 2018; and
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on October 19, 2018, three days after its posting.

I accept the evidence before me that the tenants have failed to pay the rent owed in full 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 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.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of January 21, 2019.

Section 41 of the *Act* establishes that a landlord may impose a rent increase only up to an amount calculated in accordance with the regulations, ordered by an Arbitrator, or agreed to by the tenant.

I find that the landlord has not provided any documentation to substantiate the change in rent from the \$765.00 established in the tenancy agreement to the \$775.00 indicated on the first Notice of Rent Increase form.

I also find that the landlord has raised the rent from \$826.00 to \$863.00 in 2018. In 2018, the maximum allowable increase in accordance with the regulations was 4.0%. I find that 4.0% of \$826.00 is \$33.04 however the landlord increased the rent by \$37.00.

I find that I am not able to determine the precise amount of the monthly rent owing and for this reason the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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 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(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 landlord's application for a Monetary Order for unpaid rent 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: February 01, 2019

Residential Tenancy Branch