



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 (the “Application”) by the Landlord seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), a Monetary Order for unpaid rent, and recovery of the filing fee.

The Landlord submitted a witnessed and signed Proof of Service of the Notice of Direct Request Proceeding. In the Proof of Service of the Notice of Direct Request Proceeding the Landlord’s agent declared that on January 18, 2019, they served the Tenant with a copy of the Direct Request Proceeding documents and all supporting documentation by registered mail at the dispute address. The Landlord submitted a copy of the registered mail tracking number and customer receipt and the mailing information declared on the customer receipt matches the name of the Tenant and the dispute address. Based on the above, and in accordance with sections 88 and 89 of the *Act*, I find that the Tenant was 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 and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Landlord submitted the following evidentiary material for my consideration:

- A copy of the witnessed and signed Proof of Service of the Notice of Direct Request Proceeding stating that on January 18, 2019, the Tenant was served a copy of the Direct Request Proceeding documents and all supporting documentation by registered mail;
- A copy of the registered mail customer receipt from Canada Post for the Notice of Direct Request Proceeding package served on the Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord's agent and the Tenant on November 20, 2018, indicating that rent in the amount of \$1,700.00 is due on the first day of each month for a tenancy commencing on November 1, 2018;
- An addendum to the tenancy agreement stating that the amount of rent due for the rental unit is related to the Tenant's income;
- A letter dated November 27, 2018, stating that based on new information and the Tenant's Application for Rent Subsidy, effective December 1, 2018, the Tenant's rent contribution is reduced to \$500.00 per month;
- A Direct Request Worksheet showing \$500.00 in outstanding rent owing as of January 1, 2019, and the lack of any payments towards this outstanding rent amount since the issuance of the 10 Day Notice;
- A copy of the 10 Day Notice dated January 2, 2019, with an effective vacancy date of January 15, 2019, stating that \$500.00 is owed for rent as of January 1, 2019; and
- A witnessed and signed Proof of Service Notice to End Tenancy stating that on January 2, 2019, the Tenant was served a copy of the 10 Day Notice by attaching a copy to the door or other conspicuous place, at the rental unit.

The 10 Day Notice states that the Tenant has five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy will end.

Analysis

I have reviewed all documentary evidence before me for consideration and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on January 5, 2018, three days after its posting.

Although the tenancy agreement states that rent in the amount of \$1,700.00 is due on the first day of each month, the addendum to the tenancy agreement states that the amount of rent actually payable is based on the Tenant's income. As the letter dated November 27, 2018, states that effective December 1, 2018, the Tenant's rent contribution is reduced to \$500.00 per month, I therefore find that the Tenant was obligated to pay monthly rent in the amount of \$500.00 on January 1, 2019.

The Direct Request Worksheet completed by the Landlord indicates that the Tenant owes \$500.00 in unpaid rent for January 2019 and that no amount has been paid towards January 2019 rent since the 10 Day Notice was issued.

As there is no evidence before me to the contrary, I accept the evidence before me that the tenant owed \$500.00 in rent as of January 1, 2019. I also accept that the Tenant has failed to pay the rent owed in full as outlined above 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 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, January 15, 2019. As the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant.

I also find that the Landlord is entitled to the \$500.00 sought for January rent. Further to this, as the Landlord was successful in their Application, I find that they are entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result and pursuant to section 67 of the *Act*, I find that the Landlord is entitled to a Monetary Order in the amount of \$600.00.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$600.00. 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.

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 1, 2019

Residential Tenancy Branch