



Dispute Resolution Services

Page: 1

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 landlords for an order of possession based on unpaid rent and a monetary order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on March 2, 2019, the landlords served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlords provided a copy of the Canada Post customer receipt containing the tracking number to confirm this 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 landlords, and in accordance with sections 89 and 90 of the Act, I find that the tenant has been deemed served with the Direct Request Proceeding documents on March 7, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent pursuant to sections 46 and 55 of the Act?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the Act?

Are the landlords 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 landlords submitted evidentiary material including:

- A copy of a residential tenancy agreement which was signed by one of the landlords on December 2, 2018 and the tenant on December 7, 2018, indicating a monthly rent of \$990.00, due on the first day of each month for a tenancy commencing on December 1, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords sets out their basis for a monetary claim in the amount of \$635.40 for outstanding rent, comprised of the balance of unpaid rent due by February 1, 2019 (\$990.00) less payments of a cumulative total of \$354.60 made on February 2, 2019 and February 6, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") dated February 4, 2019 for \$990.00 in unpaid rent due on February 1, 2019, with a stated effective vacancy date of February 19, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on February 4, 2019. The landlords provided a copy of the Canada Post customer receipt containing the tracking number to confirm this mailing.

The Notice restates section 46(4) of the Act which provides that the tenant had 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlords alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all relevant documentary evidence provided by the landlords. Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on February 9, 2019, five days after its registered mailing.

On the landlords' Application for Dispute Resolution by Direct Request, the landlords provide that subsequent to the date the balance of rent was due, the tenant provided partial payments of a cumulative total of \$354.60 on February 2, 2019 and February 6, 2019 (they do not specify how much was paid on each date), resulting in a balance of unpaid rent owed in the amount of \$635.40.

I find that the tenant was obligated to pay monthly rent in the amount of \$990.00, as established in the tenancy agreement. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$635.40, comprised of the balance of unpaid rent owed by February 1, 2019.

I accept the landlords' undisputed evidence and find that the tenant 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 tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, February 16, 2019. Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Therefore, I find that the landlords are entitled to an order of possession and a monetary order of \$635.40, the amount of the monetary claim established by the landlords on the Application for Dispute Resolution by Direct Request for unpaid rent owing for February 1, 2019, as of February 22, 2019, the date on which the landlords Application for Dispute Resolution by Direct Request was submitted.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an order of possession to the landlords effective two days after service of this order on the tenant. Should the tenant 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 landlords are entitled to a monetary order in the amount of \$735.40 for unpaid rent, and for the recovery of the filing fee for this application. Should the tenant 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 landlords are provided with these orders in the above terms and must serve the tenant 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: March 11, 2019