



Dispute Resolution Services

Page: 1

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 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 March 8, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord 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 landlord, 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 13, 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's representative and the tenant, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on June 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 \$2,500.00, comprised of the balance of unpaid rent due by February 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") dated February 7, 2019 for \$2,500.00 in unpaid rent due on February 1, 2019, with a stated effective vacancy date of February 17, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant on February 7, 2019 by way of leaving the Notice with an adult who apparently lives with the tenant. The Proof of Service form states that the service was witnessed by "BM" and a signature for "BM" is included on the form.

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 landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the Act the tenant was duly served with the Notice on February 7, 2019.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,500.00, 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 \$2,500.00, comprised of the balance of unpaid rent owed by February 1, 2019.

I accept the landlord's 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 effective date of the Notice, February 17, 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 landlord is entitled to an order of possession and a monetary order of \$2,500.00 for unpaid rent owed by February 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 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 landlord is entitled to a monetary order in the amount of \$2,600.00 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 landlord is 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 14, 2019

Residential Tenancy Branch