



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 landlords for an Order of Possession based on unpaid utilities and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on March 13, 2019, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords 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 March 18, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for utilities rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid utilities 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

The landlords submitted the following evidentiary material:

- A copy of a Craigslist advertisement for the rental unit indicating that the utilities would be shared;

- A copy of a Rental Application for the rental unit;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on October 23, 2018, indicating a monthly rent of \$1,999.00, due on the first day of each month for a tenancy commencing on November 1, 2018;
- A copy of a utility bill from BC Hydro for the rental unit dated January 8, 2019 for \$770.86;
- A copy of a utility bill from Fortis BC for the rental unit dated January 8, 2019 for \$197.01;
- Two copies of utility bills from Telus for the rental unit dated November 7, 2018 for \$180.81 and December 7, 2018 for \$220.01;
- Two copies of invoices from Netflix dated November 21, 2018 and December 21, 2018 for \$13.99 each;
- A copy of a demand letter from the landlord to the tenants, dated January 30, 2019, requesting payment of utilities in the amount of \$632.89;
- A copy of a witnessed Proof of Service Written Demand to Pay Utilities form which indicates that the utility demand letter was placed in the tenants' mailbox or mail slot at 8:00 pm on January 30, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated March 2, 2019, for \$632.89 in unpaid utilities. 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 March 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 6:45 pm on March 2, 2019; and
- A Direct Request Worksheet.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement states that the utilities are not included in the rent, but does not specify that the tenants are to pay the utilities to the landlord. The landlord provided a copy of an advertisement indicating the utilities would be shared. However, I find that an advertisement may be an indication of the landlords' intention but is not sufficient to establish the tenants' obligations under the final, signed, tenancy agreement.

For this reason, I dismiss the landlords' application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated March 2, 2019, without leave to reapply.

The 10 Day Notice dated March 2, 2019 is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlords' application for a Monetary Order for unpaid utilities is dismissed, with leave to reapply.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' application for an Order of Possession on the basis of the 10 Day Notice dated March 2, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated March 2, 2019, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlords' application for a Monetary Order for unpaid utilities, with leave to reapply.

I dismiss the landlords' application to recover the filing fee paid for this application, without 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: March 20, 2019

Residential Tenancy Branch