



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 rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2019, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing in fact took place on March 15, 2019. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on March 20, 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

The landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords on June 24, 2018 and the tenant on June 23, 2018, indicating a monthly rent of

\$1,300.00, due on the fifteenth day of each month for a tenancy commencing on July 31, 2018;

- A copy of a utility bill from the CRD for the rental unit dated January 29, 2019 for \$104.40;
- Three copies of utility bills from Fortis BC for the rental unit dated December 3, 2018 for \$14.14, January 4, 2019 for \$14.14, and February 1, 2019 for \$12.37;
- Four copies of utility bills from BC Hydro for the rental unit dated November 8, 2018, December 7, 2018, January 9, 2019, and February 7, 2019 for \$126.00 each;
- A copy of two e-mails from the landlord to the tenant dated January 14, 2019 and February 4, 2019 requesting payment of utilities in the amount of \$152.79;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 2, 2019, for \$1,300.00 in unpaid rent and \$280.17 in unpaid utilities. The 10 Day Notice provides that the tenant 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 Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door on March 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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 the tenant's responsibility, but does not specify that the tenant is to pay the utilities to the landlords. For this

reason, I find that the landlords are not able to treat the unpaid utilities as unpaid rent in accordance with section 46 of the *Act*.

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

- (1) A landlord may end a tenancy if rent is unpaid on any day **after** the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the tenancy agreement indicates that the monthly rent is due on the fifteenth of every month. I further find that the landlords have issued the 10 Day Notice on March 2, 2019, before the monthly rent was due for March 2019, which is not in accordance with section 46 of the *Act*.

I find that the landlords have not complied with the provisions of section 46 of the *Act*, in regards to the 10 Day Notice issued to the tenant.

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

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

For the same reasons identified in the 10 Day Notice, I dismiss the landlords' application for a Monetary Order 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, 2018, 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 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 25, 2019

Residential Tenancy Branch