



Dispute Resolution Services

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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 April 8, 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 April 5, 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 April 10, 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 landlord 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 1, 2018;
- A copy of nine utility bills for the rental unit from Fortis, BC Hydro, and the CRD;
- A copy of a demand letter e-mail from the landlord to the tenant, dated February 5, 2019, requesting payment of utilities;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 27, 2019, for \$1,300.00 in unpaid rent and \$357.31 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 April 6, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail on April 1, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was in fact sent to the tenant on March 27, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence 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 April 1, 2019, five days after its registered mailing.

Section 46 (4) of the *Act* states that, within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was April 6, 2019, which was a Saturday. The Residential Tenancy Branch is closed on Saturdays and Sundays, meaning that the latest day on which the tenant could have disputed the 10 Day Notice was on Monday, April 8, 2019.

I further find that the landlords applied for dispute resolution on April 3, 2019, before the last day that the tenant had to dispute the 10 Day Notice, and that the earliest date that the landlords could have applied for dispute resolution was April 9, 2019. The landlords made their application for dispute resolution too early.

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 27, 2019, with leave to reapply.

For the same reasons identified in the 10 Day Notice, I dismiss the landlords' application for a Monetary Order for unpaid rent 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 of March 27, 2019 is dismissed, with leave to reapply.

The landlords' application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

The landlords' application to recover the filing fee paid for this application is dismissed 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: April 10, 2019

Residential Tenancy Branch