



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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted four signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on April 5, 2019, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord 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 April 10, 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

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the tenants on August 7, 2018, indicating a monthly rent of \$2,800.00, due on the first day of each month for a tenancy commencing on September 1, 2018;
- A copy of a Title Search Print listing the applicant as the current owner of the rental property;
- A copy of two Quarterly Utility Invoices for the rental unit dated September 4, 2018 for \$139.20 and December 4, 2018 for \$139.20;
- A copy of a utility bill from Fortis for the rental unit dated September 19, 2018 for \$35.36;
- A copy of a demand letter from the landlord to the tenants, dated December 5, 2018, requesting payment of utilities in the amount of \$259.22;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the February 10 Day Notice) dated February 7, 2019, for \$2,800.00 in unpaid rent and \$259.22 in unpaid utilities;
- A copy of a witnessed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities form which indicates that the February 10 Day Notice was personally served to the tenants at 12:00 pm on February 7, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) dated March 6, 2019, for \$4,400.00 in unpaid rent and \$259.22 in unpaid utilities. The March 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 16, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant J.C. and indicates that the March 10 Day Notice was personally served to the tenants at 10:00 am on March 6, 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 section 88 of the *Act*, I find that the tenants were duly served with the March 10 Day Notice on March 6, 2019.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,800.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the March 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the March 10 Day Notice, March 16, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$4,400.00, the amount claimed by the landlord, for unpaid rent owing for February 2019 and March 2019 as of April 4, 2019.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the landlord has not provided a Proof of Service Notice Written Demand to Pay Utilities form to establish service of the demand letter dated December 5, 2018 to the tenants.

The landlord has stated that the utilities portion of the February 10 Day Notice serves as a 30 day written demand for the tenants to pay the utilities. I find that the tenants were duly served the February 10 Day Notice on February 7, 2019 and that the last day for the tenants to have paid the utilities was March 9, 2019.

I find that the March 10 Day Notice was issued to the tenants on March 6, 2019, less than 30 days from the time that the February 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent. For this reason the monetary portion of the landlord's application concerning unpaid utilities is dismissed, with leave to reapply.

As the landlord was partially 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(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,500.00 for rent owed for February 2019 and March 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a Monetary Order for unpaid utilities with 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 11, 2019

Residential Tenancy Branch