



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES and [tenant name suppressed to protect privacy]

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 which declares that on April 16, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord 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 21, 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 landlord and the tenant on November 1, 2017, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on November 1, 2017;
- A copy of a Notice of Rent Increase form dated July 29, 2018, showing the rent being increased from \$1,100.00 to the current monthly rent amount of \$1,140.00 as of November 1, 2018;
- A copy of a witnessed proof of service document which indicates that the Notice of Rent Increase was posted to the tenant's door at 12:10 pm on July 29, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 2, 2019, for \$1,140.00 in unpaid rent. 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 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 11:30 am on April 2, 2019; and
- A Direct Request Worksheet and ledger 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 5, 2019, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,140.00, as per the tenancy agreement and the Notice of Rent Increase.

I accept the evidence before me that the tenant has 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 10 Day Notice within that five day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 15, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for April 2019 as of April 12, 2019.

Section 42(2) of the *Act* requires a landlord to provide the tenant notice of a rent increase at least three months before the effective date of the increase. Section 90 of the *Act* states that a document attached to a tenant's door is considered received three days later.

The landlord submitted a witnessed document stating that the Notice of Rent Increase was attached to the tenant's door on July 29, 2018. According to section 90 of the *Act*, the Notice of Rent Increase is considered to have been received on August 1, 2018, three days after its posting, which is less than three full rental months before the stated effective date of the rent increase.

However, the deeming provisions under section 90 of the *Act* do not apply if the tenant has actually received the document before the three days have elapsed. If the tenant has actually received the Notice of Rent Increase on or before July 31, 2019, the rent increase would have taken effect on November 1, 2018.

In a Direct Request Proceeding, I find I am not able to determine when the tenant received the Notice of Rent Increase. Therefore I am not able to determine whether the rent increase was effective on November 1, 2018, or on a corrected effective date December 1, 2018.

For this reason, the landlord's application for a Monetary Order for unpaid rent 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. Should the tenant 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 rent 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 23, 2019

Residential Tenancy Branch