



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 form which declares that on May 09, 2019, the landlord’s agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on May 14, 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant, indicating a monthly rent of \$845.00, due on the first day of each month for a tenancy commencing on April 01, 2007. The tenancy agreement indicates that the landlord cooperates with various governmental agencies and/or a provincial housing commission with respect to subsidized housing, and that for eligible tenants, the rent is related to the tenant's income. The provincial housing commission calculates the tenant's portion of the rent contribution based on an application for rent subsidy. The tenancy agreement provides that the tenant is to provide income information for the purpose of qualifying for subsidized housing and to calculate a rent contribution subsidy;
- A copy of a certificate from a provincial registrar which depicts that the organization identified as the landlord in the tenancy agreement changed its name; the new name of the organization matches the name of the landlord provided on the application for dispute resolution;
- A Direct Request Worksheet, with an accompanying rental ledger, showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$957.00 as of February 01, 2019, comprised of the balance of unpaid rent owed for the months comprising the period of December 2018 to February 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 28, 2019, which the landlord states was served to the tenant on February 28, 2019, for \$957.00 in unpaid rent due on February 01, 2019, with a stated effective vacancy date of March 15, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on February 28, 2019. The landlord provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

The landlord also provided a copy of a letter dated July 17, 2018, issued by the landlord to the tenant, which notified the tenant of a rent increase to the market rent rate of \$1,084.00, effective December 01, 2018. In the letter, the landlord outlined that the tenant's rent subsidy was contingent on an annual income review, and that the tenant had not complied with the requirement of providing documents necessary to calculate the rent subsidy. The tenant was advised that the requested documents could still be submitted by July 31, 2018 to permit for the calculation of a subsidy to adjust the monthly rent owed.

Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on March 05, 2019, five days after its registered mailing.

The tenancy agreement provided by the landlord indicates that the landlord cooperates with various governmental agencies and/or a provincial housing commission with respect to subsidized housing, and that for eligible tenants, the rent is related to the tenant's income. The provincial housing commission calculates the tenant's portion of the rent contribution based on an application for rent subsidy. The tenancy agreement provides that the tenant is to provide income information for the purpose of qualifying for subsidized housing and to calculate a rent contribution subsidy. Based on the foregoing, I find that section 2(g) of the *Residential Tenancy Regulation* applies to the tenancy, such that the provisions of sections 41, 42 and 43 of the Act related to rent increases do not apply.

Based on the foregoing, I find that it was open to the landlord to notify the tenant that the monthly rent would be increased to the market rent rate since the requirements were not met—and documents needed not provided by the tenant—in order to calculate a rent subsidy. Therefore, I find that the July 17, 2018 letter issued by the landlord was sufficient notice to alert the tenant that the monthly rent would be increased to the market rent rate of \$1,084.00, effective December 01, 2018, since the tenant did not adhere to the requirement of providing documentation needed by the landlord to determine if the tenant qualified for a rent subsidy.

I find that effective December 01, 2018, the tenant was obligated to pay monthly rent in the amount of \$1,084.00 each month. I accept the evidence before me that the tenant has failed to pay rental arrears due by February 01, 2019, in the amount of \$957.00, comprised of the balance of unpaid rent owed for the months comprising the period of December 2018 to February 2019, as indicated on the landlord's Direct Request Worksheet.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, March 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$957.00 for the balance of unpaid rent owed by February 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

As the landlord was 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(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 find that the landlord is entitled to a monetary Order in the amount of \$1,057.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: May 22, 2019

Residential Tenancy Branch