



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 (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 18, 2019, the landlord 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 23, 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 landlords and the tenant on September 03, 2018, indicating a monthly rent of \$700.00 due on the first day of each month for a tenancy commencing on July 12, 2018. The tenancy agreement included a term stating that the tenant is required to pay one-third of the cost of the utility services;
- A Direct Request Worksheet showing the rent owing paid during the relevant portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$700.00 for outstanding rent, comprised of the balance of unpaid rent due by May 01, 2019. The landlord also indicates that there are unpaid utilities charges owing in the amount of \$404.24, which were due on March 15, 2019. The landlord also states that there were unpaid utility charges due by May 15, 2019, in the amount of \$233.23;
- A written demand for payment of utilities, in the form of a letter from the landlord, dated March 15, 2019, addressed to the tenant, in which the landlord asks that the tenant pay his portion of utility charges owed in the amount of \$404.24 within 30 days;
- A copy of the Proof of Service of the Written Demand to Pay Utilities, showing that the landlord served the Written Demand to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence on March 15, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form;
- A copy of a hydro bill, which demonstrates that there is an amount of \$404.24 owed by the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) dated May 06, 2019, which the landlord states was served to the tenant on May 06, 2019, for \$700.00 in unpaid rent due on May 01, 2019, and unpaid utilities owed by March 15, 2019 in the amount of \$404.24, with a stated effective vacancy date of May 16, 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 posting it to the door of the rental unit on May 06, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on May 09, 2019, three days after its posting.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, May 01, 2019. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the unpaid utility charges treated as unpaid rent, in the amount of \$233.23, indicated as being due by May 15, 2019, and will therefore make a determination based on the amount of unpaid rent and unpaid utility charges indicated as being due as of May 01, 2019, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid utility charges treated as unpaid rent, in the amount of \$233.23, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the May 06, 2019 Notice issued to the tenant, which alerted the tenant to unpaid rent and unpaid utility charges indicated as being due as of May 01, 2019.

Section 46(6) of the Act, provides, in part, the following:

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,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the tenancy agreement included a term which demonstrates that the tenant was to pay one-third of the cost of the utility services. The landlord provided a written

demand letter, dated March 15, 2019—which the tenant is deemed to have received on March 18, 2019—to the tenant for payment of the outstanding utility charges, and, consequently, after a period of 30 days had elapsed, was able to treat the unpaid utility charges as unpaid rent in accordance with subsection 46(6) of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$700.00, and was required to pay one-third of the cost of the utility services, as established in the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$700.00, comprised of the balance of unpaid rent owed by May 01, 2019.

I accept the evidence before me that the tenant has failed to pay outstanding charges arising from the amount of unpaid utilities owed by the tenant, in the amount of \$404.24, which were due by March 15, 2019.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent, and unpaid utility charges treated as unpaid 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 corrected effective date of the Notice, May 19, 2019 pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,104.24 for unpaid rent and unpaid utility charges by May 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(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 find that the landlord is entitled to a monetary Order in the amount of \$1,204.24 for unpaid rent and utilities, 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(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 28, 2019

Residential Tenancy Branch