



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 May 23, 2019, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on May 23, 2019.

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

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 landlords submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on August 30, 2016, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on September 1, 2016;
- A copy of a utility bill from BC Hydro for the rental unit dated March 26, 2019 for \$528.96;
- A copy of a utility bill from the District of Saanich for the rental unit dated March 19, 2019 for \$413.75;
- A copy of a demand letter from the landlords to the tenant, dated March 31, 2019, requesting payment of utilities in the amount of \$942.71;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 6, 2019, for \$3,471.77 in unpaid rent and \$942.71 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 May 16, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 7:25 pm on May 6, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy. The Direct Request Worksheet indicates that \$2,000.00 of the \$3,471.77 indicated on the 10 Day Notice was paid by the tenant.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on May 6, 2019.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 16, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of May 21, 2019.

The Direct Request Worksheet must clearly show any additional months for which the tenant still owes rent in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the landlord has indicated that the rent owing of \$3,471.77 consists of "May 1, 2019 and arrears." For this reason the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply.

Section 46 (6) of the *Act* allows the landlords to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. In this type of matter, the landlords must prove that they served the tenant with the demand letter in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act* and Policy Guideline # 39.

I find that the landlord has not submitted a Proof of Service Written Demand to Pay Utilities form or any other evidence to establish service of the 30 day written demand letter to the tenant. For this reason, the landlords' application for a Monetary Order for unpaid utilities is dismissed with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords 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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are 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 landlords' application for a Monetary Order for unpaid rent and 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: May 24, 2019

Residential Tenancy Branch