



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-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 to recover the filing fee paid for this application.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 09, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding documents by leaving the documents at the tenant’s residence with an adult who apparently resides with the tenant. The landlord indicates that the Direct Request Proceeding documents were left with an individual identified as “SA”, who, the landlord asserts, is the tenant’s wife. The service was confirmed as the individual identified as “SA” acknowledged receipt of the Direct Request Proceeding documents by signing the Proof of Service form. The Proof of Service form establishes that the service was witnessed by “SS” and a signature for “SS” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been served with the Direct Request Proceeding documents on May 09, 2019.

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 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 and the tenant, indicating a monthly rent of \$1,600.00, due on the first day of each month for a tenancy commencing on January 01, 2019;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there was monthly rent due by May 01, 2019, in the amount of \$1,600.00, which was not paid in full until May 08, 2019. The landlord also stated that there were unpaid utility charges, in the amount of \$126.81, due by April 23, 2019, which were not paid in full until May 08, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 02, 2019, which the landlord states was served to the tenant on May 02, 2019, for \$1,600.00 in unpaid rent due on May 01, 2019, with a stated effective vacancy date of May 12, 2019. The landlord also asserts that unpaid utility charges, in the amount of \$126.81, were due on April 19, 2019;
- A copy of the Proof of Service of the Notice asserting that the landlord served the Notice to the tenant on May 02, 2019 by way of leaving the Notice with an adult who apparently lives with the tenant. The Proof of Service form establishes that the service was witnessed by "SS" and a signature for "SS" is included on the form. The landlord indicates that the Notice was left with an individual identified as "SA", who, the landlord asserts, is the tenant's wife.

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.

On the Direct Request Worksheet, the landlord stated that on May 08, 2019, the tenant provided the full payment of rent owed, in the amount of \$1,600.00, and provided the full payment, in the amount of \$126.81, owed for unpaid utility charges.

Analysis

I have reviewed all documentary evidence provided by the landlord and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on May 02, 2019.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. Section 89 reads, in part, as follows:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant only when considering the issuance of an Order of Possession for the landlord. As the landlord served the Notice of Direct Request Proceeding in accordance with section 89(2)(c) of the *Act*, I have leave to hear only that part of the landlord's application that asks for an Order of Possession. I do not have leave to hear the landlord's application for a monetary Order to recover the \$100.00 filing fee paid for this application. Therefore, I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without leave to reapply.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,600.00, as established in the tenancy agreement. I accept the evidence before me that the tenants had failed to pay rental arrears in the amount of \$1,600.00, comprised of the balance of unpaid rent owed by May 01, 2019, for the month of May 2019.

I accept the landlord's undisputed evidence before me that the tenant failed to pay the rent owed in full by May 07, 2019, 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. The Direct Request Worksheet indicates that the tenants paid the outstanding rent owed for the month of May 2019 on May 08, 2019. However, as the outstanding rent was not paid within five days of receipt of the Notice, in accordance with section 46(4) of the *Act*, it remains open for the landlord to pursue an Order of Possession.

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, May 12, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent, based on the 10 Day Notice to End Tenancy for Unpaid Rent, dated May 02, 2019, served to the tenant for unpaid rent owing for May 2019, as of May 01, 2019.

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.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without 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 21, 2019

Residential Tenancy Branch