Dispute Resolution Services

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 December 01, 2011. 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 letter dated December 03, 2018, in which the landlord notified the tenant that subsequent to an "income review process", the calculation of the tenant's rent contribution established that effective April 01, 2019, the tenant's rent contribution was set at $959.00, which effectively established that the tenant owes a monthly amount of $959.00 per month toward the monthly rent owed under the tenancy agreement;

- 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 a monetary claim in the amount of $289.00 for outstanding rent, comprised of the balance of unpaid rent due by April 01, 2019, for the month of April 2019. The landlord indicates that a partial payment of rent, in the amount of $670.00, was received from the tenant on April 11, 2019;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 16, 2019, which the landlord states was served to the tenant on April 16, 2019, for $289.00 in unpaid rent due on April 01, 2019, with a stated effective vacancy date of May 01, 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 April 16, 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.

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 April 21, 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.

I find that the tenant was obligated to pay monthly rent, in the form of a tenant rent contribution, in the amount of $959.00 per month. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of $289.00, comprised of the balance of unpaid rent owed by April 01, 2019, for the month of April 2019.

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, May 01, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of $289.00 for unpaid rent owed for the month of April 2019, by April 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 $389.00 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 21, 2019

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Residential Tenancy Branch