



Dispute Resolution Services

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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 June 12, 2019, the landlord’s agent served the tenant “MS” 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 “MS” has been deemed served with the Direct Request Proceeding documents on June 17, 2019, the fifth day after their registered mailing.

The landlord has not provided a signed, completed Proof of Service of the Notice of Direct Request Proceeding form for the respondent “KR” and has not established that the respondent “KR” has been served the Notice of Direct Request Proceeding documents. Therefore, I dismiss the landlord’s application against the respondent “KR” with leave to reapply. I will hear the landlord’s application against the tenant “MS” only.

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 and the tenants, indicating a monthly rent of \$1,450.00, due on the first day of each month for a tenancy commencing on November 01, 2018;
- 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 by May 01, 2019 in the amount of \$4,115.00, comprised of the balance of unpaid rent owed for the months encompassing the period of February 01, 2019 to May 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 14, 2019, which the landlord states was served to the tenant on May 14, 2019, for \$4,100.00 in unpaid rent due on May 01, 2019, with a stated effective vacancy date of May 24, 2019; and
- A copy of the Proof of Service of the Notice form asserting that the landlord's agent served the Notice to the tenant "KR" by way of personal service via hand-delivery on May 14, 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 landlord also provided a written submission, in which the landlord requested to be granted leave to retain the security deposit to be applied to unpaid rent.

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 documentary evidence and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on May 14, 2019.

On the Application for Dispute Resolution by Direct Request, the landlord has included a request to retain the security deposit. However, a request to retain the security deposit cannot be considered by way of the Direct Request process. I note the landlord remains at liberty to file a separate Application for Dispute Resolution to be heard via a participatory hearing to retain the security deposit with respect to the tenancy. I dismiss the landlord's request to retain the security deposit, with leave to reapply.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,450.00, as established in the tenancy agreement. After reviewing the rental ledger provided by the landlord, I find that the amount of unpaid rent owed for the period of February 2019 to May 2019 is \$4,000.00.

I accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by May 01, 2019, in the amount of \$4,000.00, comprised of the balance of unpaid rent owed for the months comprising the period of February 2019 to May 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 24, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$4,000.00 for unpaid rent owed for the months comprising the period of February 2019 to May 2019, 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. 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 \$4,100.00 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.

I dismiss the landlord's request to retain the security deposit, 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: June 25, 2019

Residential Tenancy Branch