



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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on June 29, 2019, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on July 4, 2019, the fifth day after their registered mailing.

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and Tenant Ca.C. on February 26, 2019, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on March 1, 2019;
- A copy of a utility bill from Fortis for the rental unit dated April 9, 2019 for \$159.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 2, 2019, for \$1,155.00 in unpaid rent and utilities. The 10 Day Notice provides that the tenants 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 June 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 2:13 pm on June 2, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on June 5, 2019, three days after its posting.

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be "signed and dated by both the landlord and the tenant."

I find that Tenant Cl.C. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlord's application naming Tenant Ca.C as a respondent.

I find that Tenant Ca.C was obligated to pay the monthly rent in the amount of \$1,100.00, as per the tenancy agreement.

I accept the evidence before me that Tenant Ca.C 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 Tenant Ca.C is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 15, 2019.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlords' evidence submissions which would allow the landlord to treat the utilities as unpaid rent. For this reason the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$1,100.00, the amount claimed by the landlords, for unpaid rent owing for June 2019 as of June 18, 2019.

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 Tenant Ca.C. Should Tenant Ca.C. **and any other occupant** 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 grant the landlords a Monetary Order in the amount of \$1,200.00 for rent owed for June 2019 and for the recovery of the filing fee for this application. The landlords are provided with this Order in the above terms and Tenant Ca.C must be served with **this Order** as soon as possible. Should Tenant Ca.C 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 portion of the landlords' application for a Monetary Order for unpaid rent naming Tenant Cl.C. as a respondent without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid 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: July 05, 2019

Residential Tenancy Branch