



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

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 Proof of Service of the Notice of Direct Request Proceeding which declares that on July 16, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on July 21, 2019, the fifth day after their registered mailing.

Preliminary Matters

On the Application for Dispute Resolution, the landlord has selected the option requesting an Order of Possession and a monetary compensation for unpaid utilities. However, the landlord has submitted a statement indicating that they are not, at this time, seeking a monetary award for the portion relating to utilities.

For this reason, I have amended the application to reflect the landlord's intention of only seeking an Order of Possession and a Monetary Order for unpaid rent, and not utilities.

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 relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on October 3, 2013, indicating a monthly rent of \$995.00, due on the first day of each month for a tenancy commencing on October 3, 2013;
- A copy of three Notice of Rent Increase forms showing the rent being increased from \$995.00 to the current monthly rent amount of \$1,099.62;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 1, 2019, for \$37,772.92 in unpaid rent and \$8,760.00 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 June 11, 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 tenant's door at 3:15 pm on June 1, 2019; and
- An excel spreadsheet ledger 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 tenant was deemed served with the 10 Day Notice on June 4, 2019, three days after its posting.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,099.62, as per the tenancy agreement and the Notices of Rent Increase.

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 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 14, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of July 9, 2019.

I note that the tenancy began on October 3, 2013 and that the monthly rent was due on first day of each month, meaning the first full month's rent would have been due on November 1, 2013.

However, the ledger indicates that the landlord charged the full \$995.00 of rent for the month of October 2013. I find there is no indication in the tenancy agreement whether the tenant was responsible for the full rent or a pro-rated amount from October 3, 2013 to October 31, 2013.

Furthermore, I note that the tenancy agreement indicates that the monthly rent is due on the first day of each month. Section 46 (1) of the *Act* allows a landlord to issue a notice to end tenancy for non-payment of rent "if rent is unpaid on any day **after** the day it is due".

I find that the landlord issued the 10 Day Notice on June 1, 2019, the day the monthly rent was due for June 2019, and included the rent for June 2019 in the total amount owing. I find that this is not in accordance with section 46 of the *Act*.

I find I am not able to confirm the precise amount of rent owing and for this reason the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

As the landlord was partially 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 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 landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is 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 landlord's application for a Monetary Order for unpaid rent 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 22, 2019

Residential Tenancy Branch