



Dispute Resolution Services

Page: 1

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 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 which declares that on July 27, 2019, the landlord personally served Tenant K.S. the Notice of Direct Request Proceeding. The landlord had Tenant K.S. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant K.S. has been duly served with the Direct Request Proceeding documents on July 27, 2019.

The landlord submitted two other signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 27, 2019, the landlord personally served Tenant D.S. and Tenant S.A. the Notice of Direct Request Proceeding.

However, I find that there is no signature of a witness, or a signature of the persons who received the Notices of Direct Request Proceeding, to confirm service of the Notices of Direct Request Proceeding documents to Tenant D.S. and Tenant S.A. I find that the landlord has signed as the witness and as the person who served the Notices of Direct Request Proceeding.

I find I am not able to confirm service of the Notice of Direct Request Proceeding documents to Tenant D.S. and Tenant S.A., and for this reason, I will only proceed with the portion of the landlord's application naming Tenant K.S. as a respondent.

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 Tenant K.S. on January 20, 2019, indicating a monthly rent of \$1,200.00, due on the last day of each month for a tenancy commencing on January 27, 2019;
- Two copies of utility bills from BC Hydro for the rental unit;
- Six copies of utility bills from Fortis BC for the rental unit;
- A copy of an e-mail demand letter from the landlord to the tenants, dated April 7, 2019, requesting payment of utilities in the amount of \$275.90;
- A copy of a written demand letter from the landlord to the tenant, dated July 3, 2019, requesting payment of utilities in the amount of \$545.05;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 3, 2019, for \$3,600.00 in unpaid rent and \$490.15 in unpaid 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 July 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 8:30 pm on July 3, 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 section 88 of the *Act*, I find that Tenant K.S. was duly served with the 10 Day Notice on July 3, 2019.

I find that Tenant K.S. was obligated to pay the monthly rent in the amount of \$1,200.00, as per the tenancy agreement.

I accept the evidence before me that Tenant K.S. 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 K.S. 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, July 13, 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.

The landlord must prove that they served the tenant with the demand letter and a copy of the utility bill in accordance with section 88 of the *Act*. I find that the landlord has sent a request for utility payment by e-mail on April 7, 2019, which is not a recognized method of service under the *Act*. For this reason I find I cannot consider the e-mail demand letter for payment of utilities.

The landlord has also submitted a written demand letter for utilities dated July 3, 2019. I find that the written demand letter was issued the same day as the 10 Day Notice and that the landlord has not allowed the 30 days required to treat the unpaid utilities as unpaid rent. I find that I also cannot consider the written demand letter for payment of utilities.

For these reasons, the landlord's application for a Monetary Order for unpaid utilities is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,600.00, the amount claimed by the landlord, for unpaid rent owing for April 2019, May 2019, and July 2019 as of July 17, 2019.

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 Tenant K.S. Should Tenant K.S. **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 landlord a Monetary Order in the amount of \$3,700.00 for rent owed for April 2019, May 2019, and July 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant K.S. must be served with **this Order** as soon as possible. Should Tenant K.S. 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 landlord's application for a Monetary Order for unpaid rent owing for April 2019, May 2019, and July 2019, naming Tenant D.S. and Tenant S.A. as respondents, 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 30, 2019

Residential Tenancy Branch