



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 30, 2019, the landlords sent the tenant the Notice of Direct Request Proceeding by registered mail. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlords 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 August 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

The landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by one of the landlords and the tenant on January 28, 2018, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on February 1, 2018;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 5, 2019, for \$5,931.49 in unpaid rent. 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 July 15, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail to an address that is not the rental unit, at 12:00 pm on July 6, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on July 6, 2019;
- A copy of the tenant's ID listing the address used for the registered mailing of the 10 Day Notice and the Notice of Direct Request Proceeding;
- A copy of a text message conversation between the landlords and the tenant in which the tenant provides the landlords with the address that was used for the registered mailing of the 10 Day Notice and the Notice of Direct Request Proceeding; and
- A Direct Request Worksheet and 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 July 11, 2019, five days after its registered mailing.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,500.00, as per the tenancy agreement.

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, July 21, 2019.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent as of July 24, 2019.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet and ledger includes amounts for utility charges. The ledger also indicates that only half of

the July 2019 rent charged on July 1, 2019. However, I find there is no indication in the documentation or evidence whether the tenant was obligated to pay the full rent as of July 1, 2019 or whether the landlords and the tenant came to an agreement for a payment plan.

I find I am not able to determine the precise amount of rent owing at the time the 10 Day Notice was issued to the tenant. For this reason, the landlords' application for a Monetary Order for unpaid rent is dismissed, with leave to reapply

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 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 landlords a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are 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 landlords' 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: August 06, 2019

Residential Tenancy Branch