



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

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 August 24, 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 August 29, 2019, the fifth day after their registered mailing.

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*?

Background and Evidence

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 January 12, 2016, indicating a monthly rent of \$1,200.00, due on the last day of each month for a tenancy commencing on January 1, 2016;
- A copy of a Notice of Rent Increase form dated February 1, 2017, showing the rent being increased from \$1,200.00 to \$1,240.00 as of May 1, 2017;

- A copy of a Notice of Rent Increase form dated February 1, 2018, showing the rent being increased from \$1,240.00 to \$1,289.00 as of May 1, 2018;
- A copy of a Notice of Rent Increase form dated March 26, 2019, showing the rent being increased from \$1,289.00 to \$1,321.00 as of July 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 2, 2019, for \$421.00 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 August 12, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was placed in the tenant's mailbox or mail slot at 7:00 pm on August 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 tenant was deemed served with the 10 Day Notice on August 5, 2019, three days after it was placed in the mailbox or mail slot.

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, August 15, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, August 14, 2019.

Section 42 (2) of the *Act* establishes that the landlord "must give a tenant notice of a rent increase at least 3 months before the effective date of the increase" The Notice of Rent Increase form provides the following information regarding rent increases:

"For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st."

I find that the landlord issued the 2017 Notice of Rent Increase on February 1, 2017 with an effective date of May 1, 2017; however, I find that three whole months would mean the earliest the rent could have been increased was June 1, 2017. Therefore, I find the landlord has not provided the full three months required for the 2017 rent increase.

I also find that the landlord issued the 2018 Notice of Rent Increase on February 1, 2018 with an effective date of May 1, 2018. I find that three whole months would mean the earliest the rent could have been increased was June 1, 2018. Therefore, I find the landlord has not provided the full three months required for the 2018 rent increase.

For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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.

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: August 30, 2019

Residential Tenancy Branch