



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAVEN MANAGEMENT CO. LTD. DBA HAVEN
PROPERTIES 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 two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on October 23, 2019, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord 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 October 28, 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 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 landlords who are not the applicant and the tenants on January 20, 2018, indicating a monthly rent of \$1,450.00, due on the first day of each month for a tenancy commencing on January 20, 2018;
- A copy of a residential property management agreement showing the assignment of management responsibilities from the owners, who are named on the residential tenancy agreement, to the landlord who is applying for dispute resolution;
- A copy of the first page of a Notice of Rent Increase form;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the August 10 Day Notice) dated September 23, 2019, for \$750.00 in unpaid rent for August 2019. The August 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 October 9, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the August 10 Day Notice was sent to the tenants by registered mail at 3:50 (a.m. or p.m. not indicated) on September 23, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the August 10 Day Notice was sent to the tenants on September 23, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the September 10 Day Notice) dated September 23, 2019, for \$1,475.00 in unpaid rent for September 2019. The September 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 October 9, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the September 10 Day Notice was sent to the tenants by registered mail at 3:50 (a.m. or p.m. not indicated) on September 23, 2019;

- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the September 10 Day Notice was sent to the tenants on September 23, 2019;
- A copy of a receipt dated September 27, 2019, for \$1,475.00 of rent, paid by the tenants, which the landlord has indicated is “for use and occupancy only”;
- A copy of a receipt dated October 7, 2019, for \$700.00 of rent, paid by the tenants, which the landlord has indicated is “for use and occupancy only”; 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 Notices on September 28, 2019, five days after their registered mailings.

I accept the evidence before me that the tenants have failed to pay the rent owed in full by October 3, 2019, within the five days granted under section 46(4) of the *Act* and did not dispute either of the 10 Day Notices within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notices, October 9, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, October 10, 2019.

I note that the landlord has only submitted the first page of a Notice of Rent Increase form. Without the second page this document, I find I am not able to confirm whether the rent was increased in accordance with the *Act*.

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(s). Should the tenant(s) 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(s) must be served with **this Order** as soon as possible. Should the tenant(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 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: October 29, 2019

Residential Tenancy Branch