



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 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 form which declares that on September 20, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 25, 2019, the fifth day after their registered mailing.

Although an individual identified as “CB” is included on the application for dispute resolution as an applicant landlord, “CB” is not listed as a landlord on the tenancy agreement. As neither the name nor signature for “CB” appears on the tenancy agreement to demonstrate that “CB” entered into a tenancy agreement with the tenant, I will consider the application with “KB” being the sole landlord, and amend the application, in accordance with section 64(3)(c), to exclude “CD” as a party to this dispute.

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.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$1,150.00.

The landlord submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 24, 2019, indicating a monthly rent of \$2,100.00, due on the first day of each month for a tenancy commencing on February 15, 2019;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$1,150.00, comprised of the balance of unpaid rent due by September 01, 2019. The landlord indicated that the tenant provided a partial payment of \$1,150.00 on September 02, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 01, 2019, which the landlord states was served to the tenant on September 02, 2019, for \$2,300.00 in unpaid rent due on September 01, 2019, with a stated effective vacancy date of September 01, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the rental unit on September 02, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

The landlord provided a copy of a document dated January 27, 2019, which was signed by both the landlord and the tenant. The document depicts that the parties agreed that for the months of February 2019, March 2019, and April 2019 the monthly rent owed would be \$2,100.00, and that for the month of May 2019 the monthly rent owed would be \$2,300.00.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on September 05, 2019, three days after its posting.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$1,150.00. On the Direct Request Worksheet, the landlord indicated that the monthly rent owed was \$2,300.00. I find that the evidentiary material provided by the landlord brings into question the correct amount of rent owed under the tenancy.

On the January 27, 2019 agreement endorsed by the parties, the parties had agreed that for the months of February 2019, March 2019, and April 2019 the monthly rent owed would be \$2,100.00, and that for May 2019 the monthly rent owed would be \$2,300.00.

However, the agreement depicts only that the monthly rent would be set at \$2,300.00 for the month of May 2019, without providing any additional information to establish what amount the monthly rent was agreed to be for the subsequent months beyond May 2019. The January 27, 2019 agreement does not establish whether the monthly rent would revert back to the amount of \$2,100.00 as established in the tenancy agreement, or whether the parties had agreed that the monthly rent owed for the months following May 2019 was determined to be a different amount.

Therefore, in determining the correct amount of monthly rent owed with respect to the tenancy, I will rely upon the information provided in the tenancy agreement, which depicts that the parties agreed that the monthly rent owed was \$2,100.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,100.00, as established in the tenancy agreement. On the Direct Request Worksheet, the landlord has indicated that the tenant provided a partial payment of \$1,150.00 on September 02, 2019, resulting in a balance of unpaid rent owed in the amount of \$950.00.

I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$950.00, comprised of the balance of unpaid rent owed by September 01, 2019.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, September 15, 2019 pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$950.00 for unpaid rent owed by September 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

As the landlord was 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(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 sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,050.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 02, 2019

Residential Tenancy Branch