



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on September 20, 2019, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service forms establish that the service was witnessed by “SS” and a signature for “SS” is included on the forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on September 20, 2019.

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, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants on June 27, 2019, indicating a monthly rent of \$1,900.00 due on the first day of each month for a tenancy commencing on June 27, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 03, 2019, which the landlord states was served to the tenants on September 03, 2019, for \$1,900.00 in unpaid rent due on September 01, 2019, with a stated effective vacancy date of September 13, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of posting it to the door of the rental unit on September 03, 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 tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord provided additional submissions and evidence to show that the tenants did provide the full payment of rent that was owed by September 01, 2019. The landlord provided a note, dated September 20, 2019, in which the landlord describes that the tenants provided a partial payment of \$1,500.00 on September 07, 2019, and a second partial payment of \$400.00 on September 14, 2019, which was accepted for use and occupancy only. The landlord indicates that the full rent owed has been paid and that a monetary order is no longer sought.

The landlord also provided a copy of a letter, dated September 14, 2019, addressed to the tenants, in which the landlord confirms that he received the balance of unpaid rent on September 14, 2019, which was accepted for use and occupancy only. In the letter, the landlord notified the tenants that they were still required to vacate the rental unit by September 16, 2019.

As the landlord has provided a submission stating the full rent has been paid and that a monetary order is no longer sought, I will consider the landlord's request for an Order of Possession only.

Analysis

I have reviewed all relevant 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 tenants are 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 tenants are deemed to have received the Notice on September 06, 2019, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,900.00, as established in the tenancy agreement. I accept the landlord's undisputed evidence and find that the tenants 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.

Section 46 of the *Act* provides, in part, the following:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

As the tenants were deemed to have been served with the Notice on September 06, 2019, the last day for the tenants to either pay, in full, the overdue rent, or dispute the notice by making an application for dispute resolution, would have been September 11, 2019. I find that there is no evidence before me demonstrate that the tenants paid the overdue rent or disputed the Notice by making an application for dispute resolution within the five days granted under section 46 (4) of the *Act*. Therefore, as provided in section 55 of the *Act*, the landlord may request an order of possession of the rental unit.

I accept the evidence before me that the tenants had failed to pay the full rental arrears in the amount of \$1,900.00, comprised of the balance of unpaid rent owed by

September 01, 2019 for the month of September 2019, within the five days granted under section 46 (4) of the *Act*.

The landlord has provided evidence to demonstrate that the tenants did subsequently provide partial payments, on September 07, 2019 and September 14, 2019, which satisfied the full amount of unpaid rent owed by September 01, 2019 for the monthly rent with respect to the tenancy; however, the full payment was not provided within five days of receipt of the Notice and did not adhere to the timelines set out in section 46(4) of the *Act*.

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 corrected effective date of the Notice, September 16, 2019, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession based on the September 03, 2019 Notice served to the tenants for unpaid rent owed by September 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

Conclusion

I grant an Order of Possession to the landlords 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.

The landlord's request for a monetary order based on unpaid rent owed for the month of September 2019, and to recover the \$100.00 filing fee paid for this application, is dismissed without leave to reapply, as the landlord had indicated that a monetary order was no longer sought.

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