



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

The landlords applied for an order of possession and a monetary order by way of *ex parte* Direct Request Proceeding, pursuant to sections 47, 55, and 67 of the *Residential Tenancy Act* (the “*Act*”), and, recovery of the filing fee pursuant to section 72 of the *Act*.

The landlords submitted a witnessed Proof of Service Notice of Direct Request Proceeding which declares that on September 21, 2019 at 11:03 AM, the landlords (N.R.) served the tenants by way of hand delivery. The Proof of Service also indicates that a municipal police officer accompanied the landlords during service. Based on the above, I find that the tenants were served with the Notice of Direct Request Proceedings pursuant to sections 59 and 89 of the *Act*.

Issues

Are the landlords entitled to (1) an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*, (2) monetary compensation for unpaid rent pursuant to section 67 of the *Act*, and (3) recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- (1) a copy of a residential tenancy agreement signed by the landlords and the tenants on February 10, 2019, indicating a monthly rent of \$1,800, due on the 30th or 31st day of each month, for a tenancy commencing March 1, 2019;

- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) signed and dated September 1, 2019, for \$1,800.00 rent that was due on August 31, 2019. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent or file an Application for Dispute Resolution, or, that the tenancy would end on a stated effective vacancy date of September 11, 2019;
- (3) a copy of a witnessed Proof of Service of the 10 Day Notice which indicates that a copy of the 10 Day Notice was hand delivered to the tenant (A.V.) on September 1, 2019; and
- (4) a Direct Request Worksheet which indicates that the balance of rent owed is \$150.00.

Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenant to participate, there is a much higher burden placed on landlord in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

Regarding rent, section 26 of the *Act* requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or some of the rent. Pursuant to section 46 of the *Act*, the 10 Day Notice informed the tenants that the 10 Day Notice would be cancelled if they paid rent within five days of service. The 10 Day Notice also explains that the tenants had five days from the date of service to dispute the Notice.

The landlords provided documentary evidence to support their submission and application that the tenants did not pay the full rent when it was due. Further, there is no evidence before me that the tenants applied to cancel the 10 Day Notice.

Subsection 55(2)(c) of the *Act* states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Taking into consideration the landlords' written submissions and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for an order of possession. Thus, I grant an order of possession to the landlords. This order is effective two days after service upon the tenants.

Regarding the landlords' claim for a monetary order, their application seeks to recover \$150.00 in unpaid rent. However, the calculations performed within their Direct Request Worksheet indicate that, if payments of \$1,450.00 and \$300.00 were made, the balance owing would be \$50.00, not \$150.00.

Given the discrepancy, or math error, that appears within the landlords' application, I do not find on a balance of probabilities that the landlords have met the onus of proving the specific amount of monies owed. As such, I dismiss this aspect of the landlords' claim with leave to reapply.

As the landlords were successful in their claim for an order of possession I award them \$100.00 for recovery of the filing fee, pursuant to section 72 of the Act.

Conclusion

I grant the landlords an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlords a monetary order in the amount of \$100.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia, Small Claims Division.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 of the *Act*.

Dated: October 3, 2019

Residential Tenancy Branch