



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PERFORMANCE REALTY LTD
and [tenant name suppressed to protect privacy]

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 three, signed Proof of Service - Notice of Direct Request Proceeding documents which declared that on September 21, 2019, the Landlord sent the Tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The Landlord provided copies 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 have been deemed served with the Direct Request Proceeding documents on September 26, 2019, the fifth day after their registered mailing.

Issues 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 relevant to the issues and findings in this matter are described in this Decision.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by both the Landlord and the Tenants, indicating a monthly rent of \$2,000.00, due on the first day of each month for a tenancy commencing on February 1, 2018; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 13, 2019, for \$4,187.00 in unpaid rent. The 10 Day Notice provided 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 August 23, 2019; and
- A copy of a witnessed Proof of Service - Notice to End Tenancy form which indicated that the 10 Day Notice was personally served by hand-delivering a copy to Tenant MS at 1:05 p.m. on August 13, 2019; and
- A Direct Request Worksheet showing a partial breakdown of the rent owing and paid during the relevant portion of this tenancy; and
- 3 receipts for partial rent that was paid in August 2019.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were served with the 10 Day Notice on August 13, 2019.

I find that the Tenants were obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the Tenants are conclusively presumed, under sections 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the 10 Day Notice, August 23, 2019.

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 for the tenants to participate, there is a much higher burden placed on landlords 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. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I find that the monthly breakdown of rent owing on the Direct Request Worksheet is incomplete as the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice for August 2019. I find that \$4,187.00 is listed as owing on the 10 Day Notice but the monthly rent is only \$2,000.00. In order to claim for additional rent, the Direct Request Worksheet must clearly show any additional months that the tenant still owes rent for in order to substantiate the Landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement.

I find that I am not able to determine the total amount of rent owing to the Landlord. For this reason, the monetary portion of the Landlord's application is dismissed with leave to reapply.

However, I do find that the Landlord is entitled to an Order of Possession for unpaid rent owing as of August 31, 2019.

I find that the Landlord has been partially successful in his application and should be reimbursed for the filing fee in the amount of \$100.00.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants 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 in relation to unpaid rent, with leave to reapply.

The Landlord has established a monetary claim, in the amount of \$100.00, as compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to deduct \$100.00 from the Tenants' security deposit.

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 03, 2019

Residential Tenancy Branch