



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMH Kootenays
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On September 18, 2019, the landlord 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 landlord submitted a Proof of Service Notice of Direct Request Proceeding which declares that on September 23, 2019 at 4:30 PM, the landlord served the tenant with a Notice of Direct Request Proceeding by way of Canada Post registered mail, and, also by attaching a copy of the notice to the door of the rental unit.

A copy of the Canada Post receipt and the Registered Domestic Customer Receipt, which included the CPC Tracking Number, was included in the landlord’s application.

Based on the above, I find that the tenant was served with the Notice of Direct Request Proceeding pursuant to sections 59 and 89(1)(c) of the *Act*.

Issues

Is the landlord 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 landlord submitted the following evidentiary material:

- (1) a copy of a residential tenancy agreement signed by the tenant and the landlord's agent on June 12, 2019, indicating a monthly rent of \$600.00.00, due on the first day of the month for a tenancy commencing July 1, 2019;

(As an aside, I note that the landlord indicates that the security deposit is \$400.00, which exceeds half of the month's rent and is therefore in contravention of section 19(1) of the *Act*. While this finding has no bearing on the outcome of the landlord's application, I would caution the landlord in this regard. A security deposit cannot exceed one half of the *actual* rent of a rental unit, not one half of the "market rent.");

- (2) a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") signed and dated September 9, 2019, for \$1,200.00 in rent that was due on September 1, 2019. The 10 Day Notice provides that the tenant 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 September 23, 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 served on the tenant by being attached to the door of the rental unit on September 9, 2019 at 12:30 PM; and
- (4) a Direct Request Worksheet which summarizes the unpaid rent of \$600.00 for August 2019 and \$600.00 for September 2019.

Analysis

The standard of proof in any administrative hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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 tenant 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 tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

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.

The landlord provided documentary evidence to support their submission and application that the tenant did not pay rent when it was due, for either August or September 2019. Further, there is no evidence before me that the tenant applied to cancel the 10 Day Notice.

Taking into consideration the landlord's written submissions and all the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order of possession. Further, I find on a balance of probabilities that the landlord is entitled to a monetary award in the amount of \$1,200.00 for unpaid rent.

As the landlord was successful in this claim, they are entitled to recover the \$100.00 filing fee. Thus, I grant the landlord a monetary order of \$1,300.00 against the tenant.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant 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 landlord a monetary order in the amount of \$1,300.00, which must be served on the tenant. 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 7, 2019

Residential Tenancy Branch