



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On September 17, 2019, 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, 67, and 72 of the *Residential Tenancy Act* (the “*Act*”).

The landlords submitted a Proof of Service Notice of Direct Request Proceeding which declares that on September 23, 2019 at 2:30 PM, the landlord (K.Z.) served the tenant with a Notice of Direct Request Proceeding by hand. The tenant signed the Proof of Service, indicating that she was served. Based on the foregoing, I find that the tenant was served in compliance with sections 59 and 89 of the *Act*.

Issues

1. Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recovery of the filing fee under 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 tenant and the landlord 2019, indicating a monthly rent of \$1,300.00.00, due on the first day of the month for a tenancy commencing June 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 3, 2019, for \$1,500.00 in unpaid 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 14, 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 in person on September 3, 2019; and
- (4) a Direct Request Worksheet which tabulates the amount of unpaid rent, which consists of \$1,500.00 in arrears.

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 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.

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

Taking into consideration the landlords' 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 landlords have met the onus of proving their claim for an order of possession and for a monetary order in the amount of \$1,500.00. Further, as the landlords were successful in this claim, they are entitled to recover the \$100.00 filing fee. Thus, I grant the landlords a monetary order of \$1,600.00 against the tenant.

Further, 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. Thus, in applying section 55 of the *Act* to the evidence, I grant an order of possession to the landlords.

Conclusion

I grant the landlords 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 landlords a monetary order in the amount of \$1,600.00, 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