



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 a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on September 24, 2019, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 29, 2019, the fifth day after their registered mailing.

Although two individuals identified as “BY” and “FJ” are included on the application for dispute resolution as applicant landlords, neither BY nor FJ are listed as landlords on the tenancy agreement. As neither the names nor signatures for either BY and FJ appear on the tenancy agreement to demonstrate that BY and FJ entered into a tenancy agreement with the tenant, I will consider the application with “JY” being the sole landlord, and amend the application, in accordance with section 64(3)(c), to exclude BY and FJ as parties to this dispute.

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.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$3,830.00.

The landlord submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,915.00, due on the first day of each month for a tenancy commencing on February 28, 2019;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is a cumulative balance of unpaid rent owed by September 01, 2019 in the amount of \$3,830.00, comprised of the balance of unpaid rent owed for the months of August 2019 and September 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) which the landlord states was served to the tenant on August 23, 2019, for \$1,915.00 in unpaid rent due on August 01, 2019, with a stated effective vacancy date of September 01, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on August 23, 2019. The landlord provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

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 registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on August 28, 2019, five days after its registered mailing.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, August 01, 2019. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for September 2019 and will therefore make a determination based on the amount of unpaid rent indicated as being due by August 01, 2019, as indicated on the Notice provided to the tenant.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for September 2019, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the Notice issued to the tenant, which alerted the tenant to unpaid rent due by August 01, 2019. According to the evidentiary material provided by the landlord, the amount of unpaid rent due by August 01, 2019 was \$1,915.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,915.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,915.00, comprised of the balance of unpaid rent owed by August 01, 2019.

I accept the landlord's undisputed evidence and find that the tenant 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.

Based on the foregoing, I find that the tenant is 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 07, 2019 pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,915.00 for unpaid rent owed by August 01, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's monetary claim for unpaid rent owing for September 2019, with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,015.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 07, 2019

Residential Tenancy Branch