



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 23, 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 2:50 PM, the landlord served each of the two tenants with a Notice of Direct Request Proceeding by way of Canada Post registered mail. A copy of the Canada Post receipt and the Registered Domestic Customer Receipt, which included the CPC Tracking Numbers, was included in the landlord’s application. Further, a search of the online Canada Post registered mail tracking information indicates that the Notices of Direct Request Proceeding were delivered and ready for pickup on September 25, 2019. Based on the foregoing I find that the tenants were served with the Notices of Direct Request Proceedings pursuant to 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 one of the tenants (the agreement names both tenants, however) and the landlord May 30, 2019, and which indicated a monthly rent of \$1,800.00.00, due on the first day of the month for a tenancy commencing June 15, 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 11, 2019, for \$2,400.00 in unpaid rent and arrears that were due on September 1, 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 September 25, 2019;
- (3) a copy of a Proof of Service of the 10 Day Notice which indicates that a copy of the 10 Day Notice was served on the tenants by being attached to the door of the rental unit on September 11, 2019 at 2:00 PM; and
- (4) a Direct Request Worksheet which indicates a balance of rent owing from June 15, 2019 in the amount of \$600.00 and an additional unpaid rent amount of \$1,800.00 that was due on September 1, 2019, for a total of \$2,400.00.

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 all of the 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 by filing 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 tenants did not pay rent when it was due. Further, there is no evidence before me that the tenants 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 for unpaid rent, and, for compensation in the amount of \$2,400.00.

As the landlord was successful in their claim they are entitled to recover the \$100.00 filing fee. Thus, pursuant to section 67 of the *Act* I grant the landlord a monetary order of \$2,500.00.

Conclusion

I grant the landlord 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 landlord a monetary order in the amount of \$2,500.00, 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 7, 2019

Residential Tenancy Branch