



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE
REALTY and [tenant name suppressed to protect privacy]

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 two copies of a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 27, 2019, the landlord sent Tenant L.W. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant L.W. is deemed to have been served with the Direct Request Proceeding documents on November 1, 2019, the fifth day after their registered mailing.

The landlord submitted a copy of a Canada Post Customer Receipt containing the Tracking Number to confirm a package was sent to Tenant B.D. on October 27, 2019. However, the landlord has not provided a copy of the Proof of Service of the Notice of Direct Request Proceeding form which would include a landlord statement establishing service of the Notice of Direct Request Proceeding documents to Tenant B.D. Without this accompanying statement, I find that I am not able to confirm service of the Notice of Direct Request to Tenant B.D.

For this reason, I will only proceed with the portion of the landlord's application naming Tenant L.W. as a respondent.

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

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant L.W. on September 22, 2019, indicating a monthly rent of \$3,300.00, due on the first day of each month for a tenancy commencing on October 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 14, 2019, for \$3,300.00 in unpaid rent. The 10 Day Notice provides that Tenant L.W. 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 October 25, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to Tenant L.W.'s door at 11:00 (a.m. or p.m. not indicated) on October 14, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and I find that Tenant L.W. was obligated to pay the monthly rent in the amount of \$3,300.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that Tenant L.W. was deemed served with the 10 Day Notice on October 17, 2019, three days after its posting.

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

Based on the foregoing, I find that Tenant L.W. is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 27, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,300.00, the amount claimed by the landlord for unpaid rent owing for October 2019, as of the date of this application, October 23, 2019.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant L.W. Should Tenant L.W. **and any other occupant** 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 grant the landlord a Monetary Order in the amount of \$3,400.00 for rent owed for October 2019 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant L.W. must be served with **this Order** as soon as possible. Should Tenant L.W. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlord's application for a Monetary Order naming Tenant B.D. as a respondent without leave to reapply.

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: November 04, 2019

Residential Tenancy Branch