



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 which declares that on November 21, 2019, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on November 21, 2019.

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 the tenant on September 1, 2019, indicating a monthly rent of \$1,850.00, due on the first day of each month for a tenancy commencing on September 1, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 28, 2019, for \$1,050.00 in unpaid rent. The 10 Day Notice provides that the tenant 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 November 8, 2019;

- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 7:00 (a.m. or p.m. not indicated) on October 28, 2019;
- A copy of an Interac e-Transfer from the tenant dated November 3, 2019 in the amount of \$358.00;
- A copy of a receipt dated November 21, 2019, for \$358.00 of rent, paid by the tenant on November 3, 2019, which the landlord has indicated is "for use and occupancy only";
- A copy of a receipt dated November 21, 2019, for \$1,050.00 of rent, paid by the tenant on November 21, 2019, which the landlord has indicated is "for use and occupancy only"; 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 the tenant was obligated to pay the monthly rent in the amount of \$1,850.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 31, 2019, three days after its posting.

Section 68 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice is for a date in the future that had not occurred at the time that the 10 Day Notice was issued to the tenant, although the Notice was given to the tenant for rent owing in the month that it was received. For this reason, I have amended the date of the 10 Day Notice to reflect the day it was witnessed being served to the tenant, October 28, 2019.

I also note that the address indicated on the 10 Day Notice from which the tenant must move is slightly different than the tenant address on the 10 Day Notice where documents are served, the tenancy agreement, the Application for Dispute Resolution and all other documents submitted with the landlord's application. I have amended this address to match all other information provided for the address as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

I accept the evidence before me that the tenant has failed to pay the rent owed in full by November 5, 2019, 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 the tenant 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, November 10, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, November 11, 2019.

The landlord has indicated that the tenant has paid the full \$1,050.00 identified as owing for October 2019 on the 10 Day Notice. For this reason, the landlord's application for a Monetary Order for unpaid rent owing for October 2019 is dismissed without leave to reapply.

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 the tenant. Should the tenant 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 section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 landlord's application for a Monetary Order for unpaid rent owing for October 2019 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 22, 2019

Residential Tenancy Branch