



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on November 22, 2019, the landlord’s agent served the tenant “JH” 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 “JH” has been deemed served with the Direct Request Proceeding documents on November 27, 2019, October 03, 2019, the fifth day after their registered mailing.

Although a second individual, identified as “BL”, is listed as a respondent tenant on the application for dispute resolution, neither the name nor signature for “BL” appears on the tenancy agreement to demonstrate that “BL” entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenant “JH” only. and amend the application, in accordance with section 64(3)(c), to exclude “BL” as a party 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 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.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant, indicating a monthly rent of \$780.00, due on the first day of each month for a tenancy commencing on July 01, 2014;
- Copies of "Notice of Rent Increase" forms, provided to the tenant during the course of the tenancy, which demonstrate that the monthly rent was increased to the current amount of \$906.00, effective July 01, 2019;
- A Direct Request Worksheet, with an accompanying rental ledger, showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is a cumulative balance of unpaid rent owed in the amount of \$1,011.00, comprised of the balance of unpaid rent due by November 01, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 05, 2019, which the landlord states was served to the tenant on November 05, 2019, for \$1,011.00 in unpaid rent due on November 01, 2019, with a stated effective vacancy date of November 15, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the rental unit on November 05, 2019. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are included on the form.

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 documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on November 08, 2019, three days after its posting.

I find that as of July 01, 2019, the tenant was obligated to pay monthly rent in the amount of \$906.00, as the landlord has established that the monthly rent amount was increased from the initial amount established in the tenancy agreement, to the current amount of \$906.00, as per the Notice of Rent Increase forms.

I find that the tenant was obligated to pay monthly rent in the amount of \$906.00, and accept the evidence before me that the tenant has failed to pay cumulative rental arrears in the amount of \$1,011.00, comprised of the balance of unpaid rent owed by November 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, November 18, 2019, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession based on the November 05, 2019 Notice served to the tenant for unpaid rent owed by November 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 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 section 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$100.00 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: December 02, 2019

Residential Tenancy Branch