



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on November 24, 2019, the landlord’s agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on November 29, 2019, the fifth day after their registered mailing.

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 \$1,375.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants, indicating a monthly rent of \$750.00 due on the first day of each month for a tenancy commencing on December 01, 2018;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed by September 01, 2019 in the amount of \$645.00, 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) dated September 04, 2019, which the landlord states was served to the tenants on September 04, 2019, for \$645.00 in unpaid rent due on September 01, 2019, with a stated effective vacancy date of September 17, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of leaving a copy in the mailbox or mail slot at the tenants' residence on September 04, 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 tenants 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 tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants 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 way of leaving a copy in the mail box or mail slot at the tenants' residence, the tenants are deemed to have received the

Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on September 07, 2019, three days after it was left in the mail box or mail slot.

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 tenants, in this case, September 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 the months of October 2019 and November 2019, and will therefore make a determination based on the amount of unpaid rent indicated as being due by September 01, 2019, as indicated on the Notice provided to the tenants.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for the months of October 2019 and November 2019, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the September 04, 2019 Notice issued to the tenant, which alerted the tenants to unpaid rent due by September 01, 2019.

I find that the tenants were obligated to pay monthly rent in the amount of \$750.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the cumulative balance of rental arrears due by September 01, 2019, in the amount of \$645.00, comprised of the balance of unpaid rent owed for the months of August 2019 and September 2019.

I accept the landlord's undisputed evidence and find that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, September 17, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$645.00 for the cumulative balance of unpaid rent owed by September 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(s). 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 \$745.00 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(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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