



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on January 15, 2020, the landlords sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlords provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on January 20, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords 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 landlords submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on July 27, 2019, indicating a monthly rent of \$1,900.00, due on the first day of each month for a tenancy commencing on July 27, 2019;
- A copy of a utility bill from BC Hydro for the rental unit dated September 26, 2019 for \$65.64;
- A copy of two utility bills from Fortis BC for the rental unit dated August 23, 2019 for \$19.37 and September 24, 2019 for \$27.69;
- A copy of a demand letter from the landlords to the tenants, dated October 8, 2019, requesting payment of utilities;
- A copy of a witnessed Proof of Service Written Demand to Pay for Utilities form which indicates that the demand letter was posted to the tenants' door at 4:30 pm on October 8, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 25, 2019, for \$3,800.00 in unpaid rent and \$112.70 in unpaid utilities. The 10 Day Notice provides that the tenants 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 4, 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 tenants' door at 6:00 pm on October 25, 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 the tenants were obligated to pay the monthly rent in the amount of \$1,900.00, as per the tenancy agreement.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on October 28, 2019, three days after its posting.

I accept the evidence before me that the tenants have 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 the tenants are 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 7, 2019.

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the tenancy agreement states that the utilities are the tenants' responsibility. However, the agreement indicates that the utilities should be in the tenants' name and does not specify that the tenants are to pay the utilities to the landlords. For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

The landlords have also submitted a letter requesting financial compensation for unpaid rent owing for November 2019, December 2019, and January 2020.

In a Direct Request Proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. The 10 Day Notice was issued to the tenants on October 25, 2019. Therefore, within the purview of the Direct Request process, I cannot hear the monetary portion of the landlords' application for rent owed for November 2019, December 2019, and January 2020.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$3,800.00, the amount claimed by the landlords for unpaid rent owing for September 2019 and October 2019, as of the date of this application, January 6, 2020.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlords 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 grant the landlords a Monetary Order in the amount of \$3,900.00 for rent owed for September 2019 and October 2019 and for the recovery of the filing fee for this application. The landlords are provided with this Order 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 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 landlords' application for a Monetary Order for unpaid rent owing for November 2019, December 2019, and January 2020 with leave to reapply.

I dismiss the landlords' application for a Monetary Order for unpaid utilities with 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: January 23, 2020

Residential Tenancy Branch