



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 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 December 20, 2019, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service forms establish that the service was witnessed by “JF” and a signature for “JF” is included on the forms. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on December 20, 2019, 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

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 \$1,044.64.

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 \$850.00 due on the first day of each month for a tenancy commencing on December 01, 2017;
- A Direct Request Worksheet showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$850.00, comprised of the balance of unpaid rent due by December 01, 2019. The landlord indicates that an amount of \$194.64 is owed for unpaid utility charges which were due by November 13, 2019;
- A copy of a 30 day written demand to pay utilities, in the form of a letter dated November 13, 2019, sent by the landlord to the tenants, in which the landlord provides the tenants a written demand to provide payment of the outstanding utility charges owed by the tenants in the amount of \$194.64 by December 13, 2019;
- A copy of the Proof of Service of the written demand to pay utilities, showing that the landlord's agent served the written demand to the tenants by way of personal service via hand-delivery to the tenant "JL" on November 13, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "November Notice") dated November 13, 2019, which the landlord states was served to the tenants on November 13, 2019, for \$194.64 in unpaid utility charges due on November 13, 2019, with a stated effective vacancy date of November 13, 2019;
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the November Notice to the tenants by way of personal service via hand-delivery to the tenant "JL" on November 13, 2019. The personal service was confirmed as the tenant JL acknowledged receipt of the Notice by signing the Proof of Service form. 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;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the “December Notice”) dated December 02, 2019, which the landlord states was served to the tenants on December 02, 2019, for \$850.00 in unpaid rent due on December 01, 2019, with a stated effective vacancy date of December 12, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent served the December Notice to the tenants by way of personal service via hand-delivery to the tenant “JL” on December 02, 2019. The personal service was confirmed as the tenant JL acknowledged receipt of the Notice by signing the Proof of Service form. 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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the December Notice on December 02, 2019.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Subsection 46(6) of the *Act*, reads in part as follows:

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,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The landlord provided a copy of a November 13, 2019 written demand letter sent by the landlord to the tenants, in which the landlord provides the tenant a written demand to provide payment of the outstanding utility charges owed by the tenants in the amount of \$194.64. If a tenant is provided a written demand to provide payment of a utility charge for which he or she is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. As the landlord issued a Notice for unpaid utilities on November 13, 2019, I find that the landlord has not waited more than 30 days from the date of the written demand letter, and has therefore issued the Notice for unpaid utilities to the tenants on a date earlier than permitted under the *Act*.

I therefore find that, with respect to unpaid utilities, the November Notice was not properly served in accordance with the *Act*, and it was not open to the landlord to treat the unpaid utility charges as unpaid rent as of November 13, 2019, the date on which the November Notice was issued to the tenants. I further find that it is not open for the landlord to seek reimbursement of the unpaid utilities by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenants were obligated to pay monthly rent in the amount of \$850.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$850.00, comprised of the balance of unpaid rent owed by December 01, 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 December 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 December Notice, December 12, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$850.00 for unpaid rent owed by December 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 \$950.00 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.

I dismiss the landlord's claim for a monetary order arising from unpaid utility charges purportedly owed by the tenants, 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 06, 2020

Residential Tenancy Branch