



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 landlords (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 January 28, 2020, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “SG” and a signature for “SG” is included on the form.

Based on the written submissions 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 January 28, 2020.

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 \$2,000.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on August 01, 2018;
- 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 \$2,000.00, comprised of the balance of unpaid rent due by December 02, 2019, for the months of November 2019 and December 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 13, 2019, which the landlord states was served to the tenant on December 23, 2019, for \$1,000.00 in unpaid rent due on December 02, 2019, with a stated effective vacancy date of December 23, 2019; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on December 23, 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 December 26, 2019, three days after its posting.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's Application for Dispute Resolution by Direct Request and the amount indicated on the Notice issued to the tenant. The sum of the unpaid rent claimed on the Application for Dispute Resolution by Direct Request is \$2,000.00. The Direct Request

Worksheet indicates that unpaid rent in the amount of \$1,000.00 is owed for each of November 2019 and December 2019.

However, the Notice issued to the tenant on December 23, 2019 is in the amount of \$1,000.00 for rent due by December 02, 2019. In a Direct Request proceeding, a landlord cannot pursue rent owed in an amount different than the amount indicated as being owed on the Notice issued to the tenant. Therefore, I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the amount listed on the Notice issued to the tenant, which alerted the tenant to unpaid rent owed by December 02, 2019 in the amount of \$1,000.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,100.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay a balance of rental arrears in the amount of \$1,000.00, comprised of the balance of unpaid rent owed by December 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, January 05, 2020, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,000.00 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. 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 \$1,100.00 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 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: February 03, 2020

Residential Tenancy Branch