Dispute Resolution Services

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 (the "landlord") for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted three signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on January 29, 2020 the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided three 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 February 03, 2020, 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 $5,868.44. The landlord indicates that unpaid rent in the amount of $1,500.00 was due by December 01, 2020, and that unpaid utility charges in the amount of $4,368.44 were due by December 17, 2019.

The landlord submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the original landlords and the tenants, indicating a monthly rent of $2,000.00, due on the first day of each month for a tenancy commencing on May 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 $1,500.00, comprised of the balance of unpaid rent due by December 01, 2019;

- Copies of email messages from the landlord to the tenant, dated April 29, 2019 and May 01, 2019, in which the landlord instructs the tenant to provide payment for unpaid rent and unpaid utility charges owed by the tenant;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated December 16, 2019, which the landlord states was served to the tenant on December 19, 2019, for $1,500.00 in unpaid rent due on December 01, 2019, with a stated effective vacancy date of December 29, 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 registered mail on December 19, 2019. The landlord provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing.

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 relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on December 24, 2019, five days after its registered mailing.

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.

As part of the application for a monetary Order, the landlords indicate that an amount of $4,368.44 is sought for unpaid charges arising from the amount the landlord claims is owed by the tenants for unpaid utility charges. Section 46(6) of the Act provides the following with respect to non-payment of utilities under a tenancy agreement:

> 46(6) 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,
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> the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

“Policy Guideline #39 Direct Requests” provides the guidelines with respect to the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution for a monetary Order for unpaid rent arising from unpaid utilities, copies of the demand letter which includes copies of the utility bills. In this type of matter the landlord must prove that they

served the tenant with the demand letter and a copy of the utility bill in accordance with section 88 of the Act; email is not a recognized method of service under the Act.

I find that the application before me does not include a copy of a demand letter served to the tenant for unpaid utility charges which has been demonstrated to have been served in accordance with the Act. The landlords have provided copies of email exchanges between the parties with respect to discussion concerning unpaid utilities. The landlords contend that the written demand for payment of utilities was provided to the tenant in the form of an emails dated April 29, 2019 and May 01, 2019.

The landlords have not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act,* or the requirements under "Policy Guideline #39 Direct Requests", were adhered to, as the landlords have not provided a copy of a written demand served to the tenants in a manner approved by the Act, as the Act does not permit for documents to be served by way of email.

Based on the foregoing, I find that as the landlords have not followed the requirements under section 46(6) of the *Act*, and the requirements under "Policy Guideline #39 Direct Requests", it is not open for the landlords to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlords' application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlords' request for an Order of Possession and a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenant was obligated to pay monthly rent in the amount of $2,000.00, 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 $1,500.00, 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 03, 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 $1,500.00 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 $1,600.00 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.

I dismiss that portion of the landlords' application for a monetary Order that arises from 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: February 10, 2020

Residential Tenancy Branch