



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 Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 27, 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 were deemed to have been served with the Direct Request Proceeding documents on April 1, 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 one of the landlords and the tenants, indicating a monthly rent of \$2,200.00, due on the first day of each month for a tenancy commencing on August 5, 2019;

- A copy of a utility bill from BC Hydro for the rental unit dated February 12, 2020 for \$314.36;
- A copy of two utility bills from Fortis for the rental unit dated January 13, 2020 for \$262.11 and February 11, 2020 for \$207.92;
- A copy of a demand letter from the landlords to the tenants, dated February 27, 2020, requesting payment of utilities in the amount of \$402.14;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 27, 2020, for \$4,400.00 in unpaid rent and \$403.00 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 March 7, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities form which indicates that the 10 Day Notice and the demand letter were placed in the tenants' mailbox at 8:00 pm on February 27, 2020; 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 \$2,200.00, 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 and the demand letter on March 1, 2020, three days after they were placed in the mailbox.

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, March 11, 2020.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the date of the demand letter is the same day that the 10 Day Notice was issued to the tenants and that not enough time has passed to allow the landlords to treat the unpaid utilities as unpaid rent. For this reason, the monetary portion of the landlords' application concerning unpaid utilities is dismissed, with leave to reapply.

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 February 27, 2020. Therefore, within the purview of the Direct Request Process, I cannot hear the monetary portion of the landlords' application for rent owed for March 2020.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary award in the amount of \$2,200.00, the amount claimed by the landlords for unpaid rent owing for February 2020, as of the date of this application, March 23, 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 \$2,300.00 for rent owed for February 2020 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 March 2020 and 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: April 02, 2020

Residential Tenancy Branch