



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 26, 2020, 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 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 March 26, 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 \$1,500.00.

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

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,550.00 due on the first day of each month for a tenancy commencing on March 01, 2019;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$250.00, comprised of the balance of unpaid rent due by January 01, 2020. The landlord also indicates that unpaid rent in the amount of \$1,250.00 is owed for February 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the January Notice) dated January 02, 2020, which the landlord states was served to the tenants on January 02, 2020, for \$1,250.00 in unpaid rent due on January 01, 2020, with a stated effective vacancy date of January 17, 2020; and
- A copy of the Proof of Service of the Notice form showing that the landlord served the January Notice to the tenants by way of personal service via hand-delivery to the tenant "AB" on January 02, 2020. The personal service was confirmed as the tenant AB acknowledged receipt of the January Notice by signing the Proof of Service form. The Proof of Service form establishes that the service of the January Notice was witnessed and a name and signature for the witness are included on the form.

The January 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 January Notice. The tenants did not apply to dispute the January Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the February Notice) dated February 04, 2020. However, the landlord did not provide a copy of a Proof of Service of the Notice form to accompany the February Notice in order to prove service of the February Notice to the tenants.

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 January Notice on January 02, 2020.

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 landlords 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.

I have reviewed all documentary evidence provided by the landlord. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed “Proof of Service of the Notice to End Tenancy” form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act*. Policy Guideline 39 provides, in part, the following:

C. PROOF OF SERVICE C.1. 10 DAY NOTICE TO END TENANCY

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.

Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form to prove that the Notice to End Tenancy was served in accordance with the Act. I find that the landlord has not provided a Proof of Service of the Notice to End Tenancy form to prove that the February Notice to End Tenancy was served to the tenants in accordance with the Act as attested on the application.

I find that the landlord has not demonstrated that service of the February Notice to End Tenancy was witnessed and completed in accordance with the Act, nor has the landlord provided a completed Proof of Service of the Notice to End Tenancy form, which includes a name and signature of a witness to confirm service of the February Notice, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm service of the February Notice to End Tenancy to the tenants, which is a requirement of the Direct Request process.

Therefore, I will consider the landlord's application based on the January Notice served to the tenants.

In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenant, in this case, January 01, 2020. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for the month of February 2020, and will therefore make a determination based on the amount of unpaid rent indicated as being due by January 01, 2020, as indicated on the January Notice provided to the tenants.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for the month of February 2020, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the January 02, 2020 Notice issued to the tenants, which alerted the tenant to unpaid rent due by January 01, 2020.

According to the Direct Request worksheet provided by the landlord, the tenants were required to pay \$1,250.00 by January 01, 2020, and partial payments totalling \$1,000.00 were received by the landlord toward rent owed for January 2020, resulting in a balance of unpaid rent owed for January 2020 in the amount of \$250.00.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,550.00, 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 \$250.00, comprised of the balance of unpaid rent owed by January 01, 2020 for the month of January 2020.

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 January 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 January Notice, January 17, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$250.00 for unpaid rent owed by January 01, 2020, 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 \$350.00 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 portion of the landlord's monetary claim for unpaid rent owing for the month of February 2020, 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 07, 2020