



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dolly's Fish Market
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes OPUM-DR

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 2, 2020, the landlord personally served Tenant C.P. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 2, 2020, the landlord personally served Tenant M.A. the Notice of Direct Request Proceeding. The landlord had Tenant M.A. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

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*?

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 landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant C.P. on April 30, 2018, indicating a monthly rent of \$800.00, due on the first day of each month for a tenancy commencing on May 1, 2018;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$800.00 to the monthly rent amount of \$820.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the February 10 Day Notice) dated February 26, 2020, for \$220.00 in unpaid rent and \$150.00 in unpaid utilities that were due February 1, 2020. The February 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 5, 2020;
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent (the March 10 Day Notice) for \$415.00 in unpaid rent and \$395.00 in unpaid utilities that were due March 3, 2020. The March 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 13, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that a 10 Day Notice was placed in the tenants' mailbox at 9:00 am on February 1, 2020;
- A copy of a second witnessed Proof of Service Notice to End Tenancy form which indicates that a 10 Day Notice was placed in the tenants' mailbox at 9:00 am on March 3, 2020; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

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 that such evidentiary material 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.

March 10 Day Notice

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) **be signed and dated** by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice...and*
 - (e) when given by a landlord, be in the approved form...*

I have reviewed all documentary evidence and I find that the March 10 Day Notice is not signed or dated by the landlord.

February 10 Day Notice

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per sections 71(2) (a) and 88 of the *Act*.

On the first Proof of Service Notice to End Tenancy, the landlord has indicated a 10 Day Notice was placed in the tenants' mailbox on February 1, 2020, before date listed on the February 10 Day Notice.

On the second Proof of Service Notice of Direct Request Proceeding, there is no indication whether the landlord has served the February 10 Day Notice, the March 10 Day Notice, or both 10 Day Notices on March 3, 2020.

For this reason, I find I am not able to confirm service of the February 10 Day Notice to the tenants.

I find the issues listed above raise questions that can only be addressed in a participatory hearing.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: gov.bc.ca/landlordtenant. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

This interim 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 08, 2020

Residential Tenancy Branch