



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 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 form which declares that on April 01, 2020 the landlord served the tenant with the Notice of Direct Request Proceeding via email. The landlord asserted that the tenant replied to the email on April 03, 2020. The landlord provided copies of the email sent to the tenant on April 01, 2020, and a copy of the tenant’s email reply on April 03, 2020.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act*, orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:

- the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*
- the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document,*

or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or

- the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

Based on the written submissions of the landlord, and pursuant to the above-noted *Director's Order*, and pursuant to sections 71(2)(b) and (c) of the Act, I find that the tenant is deemed to have received the the Direct Request Proceeding documents on April 03, 2020, the date on which the tenant replied via email to the landlord's initial email addressed to the tenant containing the Notice of Direct Request Proceeding documents.

Although an individual identified as "KK" is included on the application for dispute resolution as an applicant landlord, "KK" is not listed as a landlord on the tenancy agreement. As neither the name nor signature for "KK" appears on the tenancy agreement to demonstrate that "KK" entered into a tenancy agreement with the tenant, I will consider the application with "YW" being the sole landlord, and amend the application, in accordance with section 64(3)(c), to exclude "KK" as a party to this dispute.

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 \$3,400.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on October 01, 2019;
- 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 \$1,700.00, comprised of the balance of unpaid rent due by February 01, 2020. The landlord also indicates that there is unpaid rent owed in the amount of \$1,700.00, comprised of the balance of unpaid rent due by March 01, 2020, resulting in a cumulative balance of unpaid rent in the amount of \$3,400.00 owed by March 01, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 06, 2020, which the landlord states was served to the tenant on March 09, 2020, for \$3,400.00 in unpaid rent due on March 01, 2020, with a stated effective vacancy date of March 22, 2020; and
- A copy of the Proof of Service of the Notice form asserting that the landlord served the Notice to the tenant by way of personal service via hand-delivery on March 09, 2020. 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 and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on March 09, 2020.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,700.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay a cumulative balance of rental arrears due by March 01, 2020, in the

amount of \$3,400.00, comprised of the balance of unpaid rent owed for the months of February 2020 and March 2020.

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 effective date of the Notice, March 22, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,400.00 for the cumulative balance of unpaid rent owed by March 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. 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 \$3,500.00 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: April 09, 2020

Residential Tenancy Branch