



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 02, 2020, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant has been deemed served with the Direct Request Proceeding documents on April 07, 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 \$330.12. The unpaid rent consists of unpaid utility charges being treated as unpaid rent.

The landlord provided a copy of a residential tenancy agreement which was signed by the landlord and the tenant, indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on February 01, 2019.

Under the section titled "what is included in the rent", the tenancy agreement includes a term which reads as "2/3 utility" followed by an illegible word.

Analysis

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.

The Direct Request process is a mechanism that allows a landlord to apply for an expedited decision, and as such, the landlord must follow and submit documentation exactly as prescribed by the *Act* and Policy Guideline #39 – Direct Requests. There can be no omissions or deficiencies with items being left open to interpretation or inference.

Section 46 of the Act provides, in part, the following with respect to a landlord being able to treat unpaid utilities as unpaid rent:

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,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find that the tenancy agreement does not expressly state that the tenant is required to pay utility charges to the landlord as noted above, such that the landlord would be able to treat unpaid utility charges as unpaid rent.

Instead, under the the section titled “what is included in the rent”, the tenancy agreement includes a term which reads as “2/3 utility” followed by an illegible word. The manner in which the tenancy agreement is drafted brings into question whether the total monthly rent paid to the landlord, in the amount of \$1,800.00, includes two-thirds of the utility charges resulting from utility services provided to the property in which the rental unit is located, or whether the tenant is expected to provide additional payment of utility charges apart from the monthly rent owed under the tenancy.

I find that I cannot make a determination on the issues identified above within the narrow scope of the Direct Request process. The questions raised by the issues identified above cannot be remedied by inferences in the absence of more evidentiary material or oral testimony. Therefore, I find that a participatory hearing will provide the proper venue to make a determination on these issues and to hear the landlord’s request for an Order of Possession and a monetary Order.

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 for the applicant to serve, with all other required documents, upon the tenant 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. 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

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 15, 2020

Residential Tenancy Branch