



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 18, 2020, the landlord served the tenant “CG” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service form also establishes that the service was witnessed by “JL” and a signature for “JL” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on September 18, 2020.

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

Although a second individual, identified as “DG”, is listed as a respondent tenant on the Application for Dispute Resolution by Direct Request and as a second tenant on the first page of the tenancy agreement, a signature for “DG” does not appear on the tenancy agreement to demonstrate that “DG” entered into a tenancy with the applicant landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord’s application against the tenant “CG” only, and amend the

application, in accordance with section 64(3)(c), to exclude “DG” 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 \$2,621.03.

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 \$1,800.00, due on the first day of each month for a tenancy commencing on May 01, 2018;
- 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 \$2,493.00, comprised of the balance of unpaid rent due by September 01, 2020. The landlord states that unpaid rent in the amount of \$693.00 was due by August 01, 2020, and unpaid rent in the amount of \$1,800.00 was due by September 01, 2020. The landlord also indicates that unpaid utility charges in the amount of \$128.03 are owed by the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 03, 2020, which the landlord states was served to the tenant on

September 03, 2020, for \$2,493.00 in unpaid rent due on September 01, 2020, with a stated effective vacancy date of September 13, 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 September 03, 2020. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service form. 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 September 03, 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 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.

Section 46(6) of the *Act*, reads in part as follows:

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.

The landlord provided a copy of an August 17, 2020 written demand letter sent by the landlord to the tenant, in which the landlord provides the tenant a written demand to provide payment of the outstanding utility charges owed by the tenant in the amount of \$128.03.

If a tenant is provided a written demand to provide payment of a utility charge for which she is responsible, the landlord may treat the unpaid utility charges as unpaid rent only if the utility charges remain unpaid more than 30 days after the written demand. As the landlord issued a 10 Day Notice for unpaid utilities on September 03, 2020, I find that the landlord has not waited more than 30 days from the date of the written demand, issued to the tenant on August 17, 2020, and has, therefore, issued the Notice for unpaid utilities to the tenant on a date earlier than permitted under the *Act*.

I therefore find that, with respect to unpaid utilities, the September 03, 2020 Notice was not properly served in accordance with the *Act*, and it was not open to the landlord to treat the unpaid utility charges as unpaid rent as of September 03, 2020, the date on which the Notice was issued to the tenant. I further find that it is not open for the landlord to seek reimbursement of the unpaid utilities by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

Policy Guideline 52 "COVID-19: Repayment Plans and Related Measures" and the *COVID-19 Related Measures Act* ("C19 Act") provide guidelines with respect to rent

owed for the months included in the period defined as the “specified period.” Policy Guidelines 52 provides, in the part, the following:

The “specified period” is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the specified period and are affected rent: April 1, 2020; May 1, 2020; June 1, 2020; July 1, 2020 ; and August 1, 2020

Policy Guidelines 52 provides, in the part, the following with respect to “affected rent”:

“Affected rent” means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (“C19 Tenancy Regulation”), was made under sections 10.1 and 10.2 of the *Emergency Program Act* (EPA) on August 14, 2020.

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required. A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.

I find that the landlord has not adhered to the requirements as cited in the C19 Tenancy Regulation, C19 Act, and Policy Guideline 52 as the landlord has not provided any evidentiary material to demonstrate that the parties to the tenancy entered into a payment plan, or had a prior agreement, with respect to the rent owed by August 01, 2020, which falls within the specified period. Therefore, I dismiss with leave to reapply, the portion of the landlord’s monetary claim with respect to unpaid rent owed by August 01, 2020. I will limit my consideration of the landlord’s monetary claim to the unpaid rent claimed as being owed by September 01, 2020, which falls outside of the specified period.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,800.00, as established in the tenancy agreement. I accept the evidence before me that the tenant

has failed to pay rental arrears in the amount of \$1,800.00, comprised of the balance of unpaid rent owed by September 01, 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, September 13, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,800.00 for unpaid rent owed by September 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

Pursuant to sections 55(2)(b) and 55(4)(a) of the *Act*, 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 \$1,900.00 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.

I dismiss the landlord's claim for a monetary order arising from unpaid utility charges purportedly owed by the tenant, with leave to reapply.

I dismiss with leave to reapply, the portion of the landlord's monetary claim with respect to unpaid rent owed by August 01, 2020.

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: September 28, 2020

Residential Tenancy Branch