



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 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 on which the landlord declares that on October 01, 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 October 06, 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 \$18,700.00.

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 April 01, 2019;
- A Direct Request Worksheet, with an accompanying rental ledger, showing the rent owing during the relevant portion of this tenancy in question, on which the landlord establishes that there is a cumulative balance of unpaid rent owed by September 01, 2020 in the amount of \$18,700.00, comprised of the balance of unpaid rent owed for the months encompassing the period of November 2018 to September 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 13, 2020, which the landlord states was served to the tenant on September 13, 2020, for \$18,700.00 in unpaid rent due on September 01, 2020, with a stated effective vacancy date of September 25, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of registered mail on September 13, 2020. The landlord provided a copy of the Canada Post Customer Receipt and transaction receipt containing the Tracking Number to confirm this mailing.

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 relevant documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on September 18, 2020, five days after its registered mailing.

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 guideline goes on to state:

“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.”

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 cumulative balance of unpaid rent owed for the months encompassing the period of May 01, 2020 to 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 the cumulative balance of unpaid rent owed for the months encompassing the period of May 01, 2020 to 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, and the cumulative balance of unpaid rent owed for the months encompassing the period of November 2018 to August 2019, which falls outside of the specified period.

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 the cumulative balance of rental arrears due by September 01, 2020, in the amount of \$13,600.00, comprised of the balance of unpaid rent owed for the months comprising the period of November 2018 to August 2019, and for the month of September 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 corrected effective date of the Notice, September 28, 2020, pursuant to section 53(2) of the *Act*.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$13,600.00 for the cumulative balance of 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 \$13,700.00 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 with leave to reapply, the portion of the landlord's monetary claim with respect to unpaid rent owed for the months encompassing the period of May 2020 to August 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: October 22, 2020

Residential Tenancy Branch