



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, 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 landlords (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 October 23, 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 28, 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 \$29,000.00.

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 \$5,100.00, due on the first day of each month for a tenancy commencing on July 01, 2013;
- Copies a "Notice of Rent Increase" forms provided to the tenant during the course of the tenancy, along with addendums in which the parties mutually agreed to extend the length of the fixed-term tenancy and agreed to new monthly rent amounts, which demonstrates that the monthly rent was raised to \$6,100.00, effective September 01, 2019;
- A copy of a rent "Repayment Plan" dated August 19, 2020 which shows that the tenant owes a cumulative balance of unpaid rent in the amount of \$19,474.95 by August 2020. The plan depicts that the rent owed is divided into ten installments, resulting in payments of \$1,947.50 due between October 01, 2020 to July 10, 2021, with the first payment due on October 01, 2020;
- 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 a cumulative balance of unpaid rent owed by October 01, 2020 in the amount of \$29,000.00, comprised of the balance of unpaid rent owed for the months encompassing the period of June 2020 to October 2020. The landlord indicated that monthly rent in the amount of \$5,800.00 is owed for each of the months in the preceding period;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 05, 2020, which the landlord states was served to the tenant on

October 05, 2020, for \$29,000.00 in unpaid rent due on October 01, 2020, with a stated effective vacancy date of October 15, 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 October 05, 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 October 10, 2020, five days after its registered mailing.

I find that as of September 01, 2019, the tenant was obligated to pay monthly rent in the amount of \$6,100.00, as the landlord has established that the monthly rent amount was increased from the initial amount as established in the tenancy agreement to \$6,100.00, as per the Notice of Rent Increase forms and addendums signed by the parties to extend the fixed-term tenancy.

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 rent owed under the tenancy with respect to the months of September 2020 and October 2020 is not captured within the “specified period” and is therefore not “affected rent.” Therefore, for those months, I find that the tenant was required to pay the rent owed in the amount of \$5,800.00, as noted by the landlord on the Direct Request Worksheet.

I accept the evidence before me that the tenant has failed to pay the balance of rental arrears due by October 01, 2020, in the amount of \$11,600.00, comprised of the cumulative balance of unpaid rent owed for the months of September 2020 and October 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, October 20, 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 \$11,600.00 for the cumulative balance of unpaid rent owed by October 01, 2020 for the months of September 2020 and October 2020, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

With respect to the portion of the landlord's monetary claim concerning the balance of unpaid rent owed by August 2020, for the months comprising the period of June 2020 to August 2020, I find as follows.

The balance of unpaid rent owed as of August 01, 2020 falls within the specified period as is therefore affected rent which is subject to the provisions of the payment plan as outlined in Policy Guidelines 52, the C19 Act, and "C19 Tenancy Regulation."

The landlord provided a copy of a "Repayment Plan" worksheet which shows that the tenant owes rent in the amount of \$19,474.95, for the months specified in the repayment plan, by August 2020. The plan depicts that the rent owed is divided into ten installments, resulting in payments of \$1,947.50 due between October 01, 2020 to July 10, 2020, with the first payment due on October 01, 2020.

Therefore, the information provided in the repayment plan conflicts with the information provided on the landlord's Direct Request Worksheet, which shows that rent in the full amount of \$5,800.00 for each of the months between June 2020 and August 2020, resulting in a balance of unpaid rent in the amount of \$17,400.00, was due by August 01, 2020.

With consideration given to the importance of maintaining procedural fairness, and in within the limited scope of a Direct Request proceeding, I cannot assume, within the limited purview of an ex parte proceeding, that the landlord waives the right to recover full balance of rent owed in the amount of \$17,400.00 by August 2020 for the affected period.

In a Direct Request proceeding where the affected rent is subject to a repayment plan, my purview in considering the unpaid rent owed for the affected period is limited to the amount shown on the repayment plan, since the provisions of Policy Guideline 52, the C19 Act, and "C19 Tenancy Regulation" apply. Therefore, I could grant the landlord only the amount due as the first installment payment under the repayment plan in the amount of \$1,947.50, which was due by October 01, 2020.

The portion of total rent owed for the affected period included in the repayment plan depicts that the first installment payment owed by October 01, 2020 was \$1,947.50, and not the full amount of \$17,400.00 as indicated on the Direct Request Worksheet.

If a decision is made in this proceeding regarding the issue of adjudicating the full balance of unpaid rent owed by August 2020 for the affected period, the landlord would be prevented from reapplying for a dispute resolution hearing seeking to re-adjudicate the matter of the full rent owed for the affected period of June 2020 to August 2020, as the matter would be *res judicata* and prevent another Arbitrator to re-hear and adjudicate the issue of rent owed for the affected period of June 2020 to August 2020, which would already have been adjudicated.

That the landlord applied for a monetary claim which includes the full amount of rent owed for the affected period of June 2020 to August 2020 suggests that it seeks to recover the full amount owed for that period, and in order to ensure the matter is not impacted by the principle of *res judicata*, I exercise my discretion to not make a finding on the matter and grant leave for the landlord to reapply to recover the balance of unpaid rent owed for the affected period, which, on the Direct Request Worksheet, the landlord noted as being the period of June 2020 to August 2020, such that an Arbitrator will have leave to hear a claim concerning the entire sum of rent owed for affected period under the tenancy, which, within the limited scope of the Direct Request process which is subject to consideration of the repayment plan, I cannot do.

Therefore, in order to maintain procedural fairness and not hinder the landlord's ability to seek relief under the Act to recover the full amount of unpaid rent owed for the affected period, I dismiss with leave to reapply, the portion of the landlord's monetary claim with respect to the balance of unpaid rent owed for the affected period, which, on the Direct Request Worksheet, the landlord noted as being the period of June 2020 to August 2020.

Policy Guidelines 52 provides that if the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the Residential Tenancy Branch for a monetary order.

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 \$11,700.00 for unpaid rent owed for the months of September 2020 and October 2020, 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 the balance of unpaid rent owed for the affected period, which, on the Direct Request Worksheet, the landlord noted as being the period of June 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: November 10, 2020

Residential Tenancy Branch