



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, 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 Proof of Service Notice of Direct Request Proceeding which declares that on November 17, 2020, the landlord personally served Tenant S.M. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 of the *Act*, I find that Tenant S.M. has been duly served with the Direct Request Proceeding documents on November 17, 2020.

The landlord submitted a witnessed Proof of Service Notice of Direct Request Proceeding which declares that on November 17, 2020, the landlord personally served Tenant S.W. the Notice of Direct Request Proceeding. However, the landlord also included a page with additional information indicating that the landlord handed Tenant S.W.'s documents to Tenant S.M.

I find that the witness statement on the Proof of Service form does not match the landlord's statement on the additional information page.

As I am not able to confirm the method of service of the Notice of Direct Request Proceeding to Tenant S.W., which is a requirement of the Direct Request process, I will only proceed with the portion of the landlord's application naming Tenant S.M. as a respondent.

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.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant S.M., indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on September 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated October 25, 2020, for \$18,600.00 in unpaid rent. The 10 Day Notice provides that Tenant S.M. had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 10, 2020;
- A copy of a Proof of Service Notice to End Tenancy form which was signed by Tenant S.M. and indicates that the 10 Day Notice was personally served to Tenant S.M. at 7:00 pm on October 25, 2020; and
- A ledger showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and I find that Tenant S.M. was obligated to pay the monthly rent in the amount of \$1,500.00, as per the tenancy agreement.

In accordance with section 88 of the *Act*, I find that Tenant S.M. was duly served with the 10 Day Notice on October 25, 2020.

I accept the evidence before me that Tenant S.M. has failed to pay the rent owed in full within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that Tenant S.M. is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 10, 2020.

Policy Guideline #52 provides the following information pertaining to the *COVID-19 Related Measures Act (the C-19 Act)*:

“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.”

I find that the 10 Day Notice includes rent owing from April 2020 to August 2020 which is considered affected rent. I also find that the landlord has not submitted a copy of a repayment plan or a valid prior agreement to demonstrate that they had the authority to issue a 10 Day Notice for the affected rent.

For this reason, I find I cannot consider the portion of the landlord's application for a Monetary Order for unpaid affected rent from April 2020 to August 2020.

I also note that the ledger indicates that payments were made on April 20, 2020, May 26, 2020, and June 19, 2020. However, the ledger does not clearly indicate whether these payments were applied to arrears owing before April 2020 or if the payments were applied to the affected rent.

I find I am not able to determine the precise amount of rent owing prior to the specified period, and for this reason, I cannot consider the landlord's application for a Monetary Order for unpaid rent owing from April 2019 to March 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,000.00, the amount claimed by the landlord for unpaid rent owing for September 2020 and October 2020, as of the date of this application, November 10, 2020.

As the landlord was partially 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 Tenant S.M. Should Tenant S.M. **and any other occupant** 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 grant the landlord a Monetary Order in the amount of \$3,100.00 for rent owed for September 2020 and October 2020 and for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and Tenant S.M. must be served with **this Order** as soon as possible. Should Tenant S.M. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlord's application for a Monetary Order for unpaid rent owing for September 2020 and October 2020, naming Tenant S.W. as a respondent, without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing from April 2019 to March 2020 with leave to reapply.

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: December 03, 2020

Residential Tenancy Branch