



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J. & G. Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPRM-DR, OPR-DR-PP, 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 which declares that on January 13, 2021, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed served with the Direct Request Proceeding documents on January 18, 2021, 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.

The landlord submitted the following relevant evidentiary material:

- A copy of an Application for Rent of Suite agreement which was signed by the landlord and the tenant on August 2, 2014, indicating a monthly rent of \$1,100.00 plus \$45.00 for parking, due on the first day of each month for a tenancy commencing on September 1, 2014.;
- A copy of four Notice of Rent Increase forms ranging from December 1, 2015 to January 1, 2019 showing the rent being increased from \$1,100.00 to the current monthly rent amount of \$1,245.00 (the Valid Notices of Rent Increase).
- The landlord also included as part of this Application a Notice of Rent Increase form dated January 6, 2020 showing the rent being increased from \$1,245.00 to \$1,277.00 effective May 1, 2020. However, I note that pursuant to the Order of the Lieutenant Governor in Council No. 579 approved November 9, 2020, a Notice of Rent Increase effective after March 30, 2020 will not take effect until July 10, 2021.
- A copy of the Decision of Arbitrator N. McKay pursuant to an Application for Dispute Resolution commenced by the landlord under File No. 910006229. A settlement agreement was recorded in the Decision which set out, among other things, a repayment plan indicating the tenant would be responsible for outstanding rent to be paid in monthly installments in the amount of \$425.00 starting on January 1, 2021;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 2, 2021, for \$1,745.00 in unpaid rent. The 10 Day Notice provides that the tenant 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 January 12, 2021;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenant at 7:00 p.m. on January 2, 2021; and
- A copy of a blank Direct Request Worksheet form.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenant was served with the 10 Day Notice on January 2, 2021.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,245.00 as per the tenancy agreement and the Valid Notices of Rent Increase.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day Notice within that 5 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 10 Day Notice, January 12, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing, as of the date of this application, January 9, 2021.

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 that such evidentiary material 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 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Policy Guideline #39 on Direct Requests provides the following information:

The director may dismiss, with leave to reapply, all or portions of an application made through the direct request process when a landlord:

- **has not provided all the required documents with the application for dispute resolution;** [emphasis added]
- has not provided proof of service of the required documents; or
- has applied to retain the security deposit or pet damage deposit, or for compensation other than for the unpaid rent/utilities that are the basis of the direct request application. These other matters cannot be determined through the direct request process.

I find that the landlord submitted a blank Direct Request worksheet. Therefore, I am unable to substantiate the landlord’s claim for outstanding rent. For this reason, the monetary portion of the landlord’s application for unpaid rent is dismissed with leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the 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 the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary Order for unpaid rent, with leave to reapply.

Pursuant to section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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.

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: February 02, 2021

Residential Tenancy Branch