



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westlor Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR

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 Notice of Direct Request Proceeding which declares that on December 24, 2020, 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 to have been served with the Direct Request Proceeding documents on December 29, 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*?

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 the tenant on February 3, 2016, indicating a monthly rent of \$1,100.00, due on the first day of each month for a tenancy commencing on March 1, 2016;
- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,100.00 to the monthly rent amount of \$1,140.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 3, 2020, for \$7,210.00 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 December 13, 2020;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:00 am on December 3, 2020; and
- A Direct Request Worksheet and 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 the tenant was obligated to pay the monthly rent in the amount of \$1,140.00, as per the tenancy agreement and the Notice of Rent Increase.

In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on December 6, 2020, three days after its posting.

I accept the evidence before me that the tenant 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 the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 16, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, December 17, 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.

I also note the ledger indicates the tenant made payments on September 15, 2020, October 8, 2020, and October 23, 2020. However, I find the landlord has not indicated whether these amounts were applied towards the rent owing from September 2020 onwards or if a portion was applied to the affected rent arrears.

I find I am not able to confirm which portion of the landlord's monetary claim is comprised of base rent and which portion is comprised of affected rent. For this reason, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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.

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 03, 2021

Residential Tenancy Branch