Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 January 22, 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 to have been served with the Direct Request Proceeding documents on January 27, 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*?

Background and Evidence

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 July 1, 2018, indicating a monthly rent of $959.00, due on the first day of each month for a tenancy commencing on July 1, 2018;

- A copy of a Notice of Rent Increase form showing the rent being increased from $959.00 to the monthly rent amount of $982.00;

- A copy of a Repayment Plan indicating the tenant would be responsible for repayment of affected rent in monthly installments of $99.46 starting on October 1, 2020 and ending on October 1, 2021;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 9, 2021, for $3,141.00 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 19, 2021;

- 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 January 9, 2021; and

- A Direct Request Worksheet 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 $982.00, 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 January 12, 2021, 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, January 22, 2021.

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

> *"The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021…*
>
> *A landlord and tenant may mutually agree **in writing** to amend the terms of a repayment plan to extend the repayment period so that the tenant will pay the affected rent over more installments."*

The landlord submitted a copy of a Repayment Plan showing the tenant would pay monthly installments from October 1, 2020 to October 1, 2021, past the repayment end date established in Policy Guideline #52.

However, I find the landlord has not submitted a copy of a document containing the tenant's signature to demonstrate the tenant consented in writing, to this longer repayment schedule. I find I am not able to confirm the validity of the Repayment Plan submitted by the landlord.

Furthermore, the Direct Request Worksheet indicates the tenant made payments greater than the monthly rent in November 2020 and December 2020. However, I find the landlord has not indicated whether these extra amounts were applied towards the affected rent arrears or towards the unaffected rent arrears. I find I am not able to confirm which portion of the landlord's monetary claim for arrears is comprised of base rent and which portion is comprised of affected rent.

For these reasons, the landlord's application for a Monetary Order for unpaid rent owing from December 2019 to October 2020 is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of $982.00, the amount claimed by the landlord for unpaid rent owing for January 2021, as of the date of this application, January 20, 2021.

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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of $982.00 for rent owed for January 2021. 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 11, 2021

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Residential Tenancy Branch