



Dispute Resolution Services

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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 two signed Proof of Service Notice of Direct Request Proceeding forms which declare that on April 3, 2021, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants are deemed to have been served with the Direct Request Proceeding documents on April 8, 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 on March 19, 2019 and Tenant M.C. on March 12, 2019, indicating a monthly rent of \$775.00, due on the first day of each month for a tenancy commencing on April 1, 2019
- A copy of a Notice of Rent Increase form showing the rent being increased from \$775.00 to the monthly rent amount of \$825.00 as of September 1, 2020

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 13, 2021, for \$1,450.00 in unpaid rent. The 10 Day Notice provides that the tenants 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 March 23, 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 Tenant C.C. at 7:30 pm on March 13, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Tenant C.C. has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, I will only proceed with the portion of the landlord’s application naming Tenant M.C. as a respondent.

In accordance with section 88 of the *Act*, I find that Tenant M.C. was duly served with the 10 Day Notice on March 13, 2021.

I accept the evidence before me that Tenant M.C. 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 M.C. 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, March 23, 2021.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of the date of this application, March 30, 2021.

On March 30, 2020, the Residential Tenancy Branch issued a ministerial order prohibiting rent increases. This prohibition was extended to July 10, 2021 by way of the COVID-19 Regulation.

The landlord submitted a Notice of Rent Increase form indicating the rent was increased as of September 1, 2020, within the increase-prohibited period.

Furthermore, section 43(5) of the *Act* allows a tenant to deduct any illegally collected rent increase from the next month’s rent.

I find that I am not able to determine whether Tenant M.C. started paying the increased rent in September 2020, and if so, whether Tenant M.C. has deducted the overpayment(s) from a subsequent month's rent.

I find that I am not able to confirm the precise amount of rent owing and 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 Tenant M.C. Should Tenant M.C. 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.

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: May 04, 2021

Residential Tenancy Branch