



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXSAVE REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 29, 2014 an agent for the Landlord personally served the male Tenant with the Notice of Direct Request Proceeding by registered mail. The male Tenant appears to have signed the Proof of Service to acknowledge receipt of the documents. Based on the written submissions of the Landlord, I find the male Tenant has been served with the Direct Request Proceeding documents.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 29, 2014 an agent for the Landlord personally served the female Tenant with the Notice of Direct Request Proceeding by registered mail. The female Tenant appears to have signed the Proof of Service to acknowledge receipt of the documents. Based on the written submissions of the Landlord, I find the female Tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Act*?

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant.

- A copy of a residential tenancy agreement, which appears to be signed by both Tenants, which indicates that the tenancy began on August 14, 2013 and that the rent of \$800.00 is due by the first day of each month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that appears to be signed by an agent for the Landlord and is dated August 05, 2014, which declares that the Tenants must vacate the rental unit by August 15, 2014 as they have failed to pay rent in the amount of \$2,610.00 that was due on August 01, 2014. The Notice declares that the tenancy will end unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy, in which an agent for the Landlord declared that the Notice was personally served to the male Tenant on August 05, 2014, in the presence of a third party, who also signed the Proof of Service.
- A ledger that shows the Tenant owed a total of \$10,000.00 in rent and \$792.56 in utilities; and that the Tenant has paid \$8,752.50.
- A Request for Utility Payment, dated June 16, 2014, in which the Landlord makes a written request for utilities of \$30.06.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on August 05, 2014.

In the Application for Dispute Resolution, the Landlord has applied for a monetary Order of \$2,066.71. In the monetary worksheet the Landlord indicates it is seeking \$2,010.00 for unpaid rent from August and \$30.06 for unpaid utilities from July of 2014, which totals \$2,040.06.

In a Request for Utility Payment the Landlord indicates that a utility charge of \$30.06 is owed for a previous utility bill and \$26.65 is owed for a new utility bill. \$26.65 is the difference between the amount on the monetary worksheet and the total amount claimed.

Preliminary Matter

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's claim. In reaching this conclusion I was heavily influenced by the fact the Landlord is seeking a monetary Order of \$2,066.71, but only provides a list of claims that total \$2,040.06.

The Landlord did submit evidence to show that \$26.65 is owed for a “new utility bill”, which is the difference between the amount on the monetary worksheet and the total amount claimed. Section 59(2)(b) of the *Act* requires a landlord to clearly inform a tenant of the details of the claim. This is the primary purpose of the monetary worksheet. In my view providing the information in supporting documents is not sufficient notice of the claim as it is entirely possible that a tenant may not read all of the evidence submitted.

As the Landlord has not properly informed the Tenant that it is seeking compensation for more than \$30.06 for unpaid utilities, I refuse to consider a claim for unpaid utilities that exceeds this amount. The Landlord retains the right to file another Application for Dispute Resolution for any unpaid utilities arising after this debt.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$800.00 by the first day of each month.

On the basis of the ledger submitted in evidence, I find that the Tenant was required to pay \$10,000.00 in rent during this tenancy. On the basis of the ledger, I find that the Tenant has only paid \$8,752.50 in rent to the Landlord. I therefore find it reasonable to conclude that the Tenant owed the Landlord \$1,247.50 in rent when the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenants paid the outstanding rent since the Application for Dispute Resolution was filed and therefore I find that the Tenants owe rent of \$1,247.50.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was personally served to the male Tenant on August 05, 2014. I have no evidence to show that the Tenants filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 46(5) of the *Act*, I therefore find that the Tenants accepted that the tenancy ended on the effective date of the Notice, which was August 15, 2014.

Section 46(6) of the *Act* authorizes a landlord to treat unpaid utility charges as rent if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

While I accept that the Landlord created a Request for Utility Payment, dated June 16, 2014, in which the Landlord makes a written request for utilities of \$30.06, I find that I have insufficient evidence to conclude that this written request was served to the Tenant. In reaching this determination I was heavily influenced by the absence of any written documentation that outlines how/when it was served to the Tenant. As the Landlord has failed to establish that the written request was served to the Tenant, I am unable to treat this debt as unpaid rent and I am, therefore, unable to grant compensation for this debt through this direct request proceeding.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$1,247.50 for unpaid rent and I grant a monetary Order in that amount. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: September 08, 2014

Residential Tenancy Branch

