



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 23, 2017, 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 has been deemed served with the Direct Request Proceeding documents on January 28, 2017, 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 evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord on December 21, 2016 and the tenant on December 22, 2016, indicating a monthly rent of \$2,000.00, due on the first day of the month for a tenancy commencing on December 22, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 12, 2017, and placed in the tenant's mailbox on January 12, 2017, with a stated effective vacancy date of January 12, 2017, for \$2,645.00 in unpaid rent and \$1,000.00 in unpaid security deposit.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was placed in the tenant's mailbox at 3:30 pm on January 12, 2017. The 10 Day Notice states 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.

Analysis

I have reviewed all documentary evidence and 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 15, 2017, three days after its being placed in the mailbox.

I find that the tenant was obligated to pay the monthly rent in the amount of \$2,000.00, as per the tenancy agreement.

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 corrected effective date of the 10 Day Notice, January 25, 2017.

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.

I note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice. In a Direct Request Proceeding, if the landlord is claiming a pro-rated rent for the partial month of December 2016, the tenancy agreement must clearly show the amount owing in order to substantiate the landlord's claim for any monies over and above the amount of rent as shown on the tenancy agreement.

For this reason, I dismiss the portion of the landlord's claim relating to rent for December 2016, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$2,000.00, the amount claimed by the landlord, for unpaid rent owing for January 2017 as of January 23, 2017.

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 find that the landlord is entitled to a Monetary Order in the amount of \$2,000.00 for rent owed for January 2017. 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.

The portion of the landlord's monetary claim regarding rent from December 2016 is dismissed, 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: January 30, 2017

Residential Tenancy Branch