



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on July 22, 2017, the landlords personally served each of the tenants the Notice of Direct Request Proceeding. The landlords had a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlords and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on July 22, 2017.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proofs of Service of the Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord on October 4, 2014 and the tenants on October 1, 2014, indicating a monthly rent of

\$1,000.00, due on the first day of each month for a tenancy commencing on October 15, 2014;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,000.00 to the current monthly rent amount of \$1,040.00, effective February 1, 2017;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 2, 2017, and posted to the tenants' door on July 2, 2017, with a stated effective vacancy date of July 11, 2017, for \$1,040.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice was posted to the tenant's door at 12:00 pm on July 2, 2017. The 10 Day Notice states 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.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on July 5, 2017, three days after its posting.

I accept the evidence before me that the tenants have 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 tenants are 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, July 15, 2017.

Therefore, I find that the landlords are entitled to an Order of Possession for unpaid rent owing for July 2017 as of July 17, 2017.

Part 3, section 41 of the *Act* establishes that "a landlord must not increase rent except in accordance with this Part."

Part 3, section 43 (1) of the *Act* establishes that

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

The maximum allowable increase for the year 2017 is 3.7%. I find that 3.7% of \$1,000.00 is \$37.00. On the Notice of Rent Increase form, the landlords have requested an increase in the amount of \$40.00, which is not in accordance with section 43(1)(a) of the *Act*.

The landlords have not provided any documentary evidence to show that they obtained an order from the Residential Tenancy Branch under sections 43(1)(b) or that they obtained the tenants' written consent under section 43(1)(c) of the *Act*.

As I am unable to determine the amount of the monthly rent owed, the landlord's application for a Monetary Order is dismissed with leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants 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 landlords' application for a Monetary Order 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: July 31, 2017

Residential Tenancy Branch