



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

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 October 18, 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 October 23, 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on May 01, 2006, indicating a monthly rent of \$575.00 for three months and \$625.00 for nine months, due on the first day of each month for a tenancy commencing on May 1, 2006;
- Three copies of Notice of Rent Increase forms with effective dates in the years 2010, 2016 and 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 October 04, 2017, with a stated effective vacancy date written as October 2017, for \$2,360.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left with an adult who apparently lives with the tenant at 4:00 p.m. on October 04, 2017. The landlord had a witness sign the Proof of Service Notice to End Tenancy to confirm personal service. 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 section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on October 04, 2017.

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 section 46(5) of the *Act* to have accepted that the tenancy ended on an unspecified date in October 2017. As the 10 Day Notice failed to identify an effective date, I issue the Order of Possession to take effect on October 31, 2017, the last day of this month.

In relation to the Monetary Order, the landlord's Application for Dispute Resolution by Direct Request has requested the amount of \$2,360.00 which arises from unpaid rent for August, September, and October, 2017.

The monthly rent in the tenancy agreement was established at \$575.00 for three months and \$625.00 for nine months. Although the landlord submitted three Notice of Rent Increase forms for 2010, 2016 and 2017, there was no evidence submitted indicating how the rent was increased from the rent set pursuant to the tenancy agreement in the amount of \$625.00 to the amount listed on the 2010 Notice of Rent Increase form in the amount of \$695.00, the amount by which all further Notice of Rent Increase forms submitted were based.

While I am satisfied that the tenant has not paid rent, I find the documentation in relation to the rent increase amounts is insufficient to enable the issuance of a Monetary Order.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenant to participate, there is a much higher burden placed on landlord in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied. The onus is on the landlord to present evidentiary material that 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.

For the above reasons, I dismiss the landlord's claim for a Monetary Order for outstanding rent for August, September, and October, 2017, in the amount of \$2,360.00, but provide the landlord leave to re-apply for the outstanding rent through the conventional participatory hearing process.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective by **1:00 p.m. on October 31, 2017, after service of this Order** on the tenant. Should the tenant(s) 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 claim for a Monetary Order for outstanding rent for August, September, and October, 2017, in the amount of \$2,360.00, with leave to re-apply through the conventional participatory hearing process.

Pursuant to section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. 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: October 24, 2017

Residential Tenancy Branch