



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRUM-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 three signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on October 25, 2017, 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 October 30, 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 a residential tenancy agreement with addendum which was signed by the landlord on October 26, 2016 and the tenants on December 31, 2016, indicating a monthly rent of \$1,700.00, due on the first day of each month for a tenancy commencing on November 1, 2016;

- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of two receipts dated September 25, 2017 for \$800.00 of rent and October 3, 2017 for \$900.00 of rent, paid by the tenants, which the landlord has indicated are “for use and occupancy only”;
- Two copies of utility bills from Fortis BC for the rental unit dated August 8, 2017 for \$53.08 and September 6, 2017 for \$51.08 totaling \$104.16; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 24, 2017, with a stated effective vacancy date of October 4, 2017, for \$1,700.00 in unpaid rent and \$52.08 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 11:30 am on September 24, 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on September 24, 2017.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,700.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full by September 29, 2017, 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 tenants are 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, October 4, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of October 11, 2017.

I find that the tenants have paid the full amount of rent indicated on the 10 Day Notice. For this reason, the monetary portion of the landlord's application for unpaid rent owing for September 2017 is dismissed without leave to reapply.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenants are given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent. For this reason the monetary portion of the landlord's application concerning unpaid utilities 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 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent owing for September 2017 without leave to reapply.

I dismiss the landlord's application for a Monetary Order for unpaid utilities 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: October 31, 2017

Residential Tenancy Branch