



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 to recover the filing fee.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 08, 2017, the landlord's agent personally served the tenant the Notice of Direct Request Proceeding. The landlord's agent had the tenant and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord's agent and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on December 08, 2017, the day it was personally served to the tenant.

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 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 agent for the landlord and the tenant on June 30, 2015, indicating a monthly rent of \$7,500.00, due on the first day of each month for a tenancy commencing on July 01, 2015. The landlord submitted a note into evidence indicating that prior to the tenant

moving in, there was a verbal agreement made that the rent would be \$6,000.00 per month;

- A copy of a Property Management Agreement between the registered owner of the rental unit and the agent for the landlord made June 02, 2015;
- Four copies of addendums to the tenancy agreement extending the term of the tenancy agreement;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 08, 2017 for \$18,000.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides 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 on the stated effective vacancy date of November 17, 2017;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally handed to the tenant at 11:30 a.m. on November 08, 2017; and
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

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 November 08, 2017, the day it was personally served to the tenant.

I find that the tenant was obligated to pay the monthly rent in the amount of \$6,000.00, as per the tenancy agreement and note submitted into evidence by the landlord.

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 the corrected effective date of the 10 Day Notice, November 18, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for September, October and November 2017 as of December 07, 2017.

As the landlord was 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 **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 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 *Act*.

Dated: December 11, 2017

Residential Tenancy Branch