



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 24, 2018, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on March 01, 2018, 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:

- Two copies of the Proof of Service of the Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on November 01, 2017, indicating a monthly rent of \$800.00 due on the first day of the month for a tenancy commencing on November 01, 2017;
- A Direct Request Worksheet showing the rent and utilities owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,600.00 for unpaid rent, and \$300.00 for unpaid utilities claimed as being owed by the tenants;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 08, 2018, which the landlord states was served to the tenants on February 08, 2018, for \$1,600.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of February 18, 2018. The landlord also indicates that an amount of \$300.00 is owed by the tenants for unpaid utilities;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit on February 08, 2018. The Proof of Service form establishes that the service was witnessed by "AK" and a signature for "AK" is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all relevant documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on February 11, 2018, three days after its posting.

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 for the tenants to participate, there is a much higher burden placed on landlords 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.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

As part of the application for a monetary Order, the landlord indicates on the Direct Request worksheet that an amount of \$300.00 is sought for unpaid charges arising from the amount the landlord claims is owed by the tenants for utility services. Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

“Policy Guideline #39 Direct Requests” provides the guidelines which govern the Direct Request process. The guideline provides that the onus is on the landlord to ensure that they have included all required documents necessary for an application for dispute resolution via the Direct Request process. Policy Guideline #39 establishes that the landlord must provide, when making an application for dispute resolution for a monetary Order for unpaid rent arising from unpaid utilities, copies of the demand letter which includes copies of the utility bills. I find that the application before me does not include a copy of a demand letter served to the tenants with respect to unpaid utility charges claimed as being owed by the tenants.

Although the tenancy agreement does stipulate that the tenants are required to pay an additional fee for a portion of the utilities provided with respect to the rental unit, the

landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act*, or the requirements under “Policy Guideline #39 Direct Requests”, were adhered to, as the landlord has not provided a copy of a written demand served to the tenants to direct them to pay the outstanding amount owed for the portion of the utilities they are expected to pay as established in the tenancy agreement.

Based on the foregoing, I find that as the landlord has not followed the requirements under section 46(6) of the *Act*, and the requirements under “Policy Guideline #39 Direct Requests”, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss, with leave to reapply, that portion of the landlord’s application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord’s request for an Order of Possession and a monetary Order to the unpaid rent claimed as owing to the landlord. I note the landlord remains at liberty to file a separate Application for Dispute Resolution seeking to recover unpaid utility charges claimed as being owed by the tenants.

I find that the tenants were obligated to pay monthly rent in the amount of \$800.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$1,600.00, comprised of the balance of unpaid rent owed by February 01, 2018 for the months of January 2018 and February 2018.

I accept the landlord’s undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 corrected effective date of the Notice, February 21, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,600.00 for unpaid rent owed for the months of January 2018 and February 2018, as of February 21, 2018, the date on which the landlord’s Application for Dispute Resolution by Direct Request was submitted.

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 dismiss the landlord's monetary claim for unpaid utilities, with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

Pursuant to sections 67 and 72 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,700.00 for unpaid rent, and for the recovery of the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 02, 2018

Residential Tenancy Branch