



Dispute Resolution Services

Page: 1

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 March 20, 2018, 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 is deemed to have been served with the Direct Request Proceeding documents on March 25, 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:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on June 24, 2017, indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on July 1, 2017;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 12, 2018 for \$2,500.00 in unpaid rent that was due on February 1, 2018. 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 February 22, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice would be posted to the tenant's door or put in the mailbox, and was done so at 1:45 on February 12, 2018. The Proof of Service establishes that the service by "AS" was witnessed by "RS", and a signature for RS is included on the form;
- A Direct Request Worksheet showing that the tenant made a partial payment of \$1,250.00 on February 20, 2018, and a balance of rent was owing for February 2018 of \$1,250.00. As well, the landlord indicated that rent was owed on March 1, 2018 for \$2,500.00; and
- A picture of the 10 Day Notice posted to the door of the rental unit.

Analysis

Direct Request proceedings are *ex parte* proceedings whereby the opposing party is not invited to participate in the hearing or make any submissions. Without an ability for the tenant to participate, there is a much higher burden placed on the landlord in these types of proceedings, as opposed to 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.

Furthermore, in these types of proceedings, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria. 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. Alternatively, the application may be dismissed.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 15, 2018, three days after it was posted to the door of the rental unit. I also find that the tenant was obligated to pay the monthly rent in the amount of \$2,500.00, as per the tenancy agreement. Based on the evidence before me, I accept that the tenant made a partial payment of \$1,250.00 on February 20, 2018, but failed to pay the balance of all the rent owing by this date, which is required to cancel the notice under section 46(4) of the *Act*, as this was the last day to do so.

Furthermore, I find it important to note that the tenant did not dispute the 10 Day Notice within this legislated time period either.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 46(5) and 53(2) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice of February 25, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,250.00, the amount claimed by the landlord for unpaid rent owing for February 2018. However, I do not find that the landlord is entitled to a monetary order of \$2,500 for March 2018 rent, as this outstanding balance cannot be claimed on this application without the corresponding notice for the rent owing for March. As such, I dismiss the request for March 2018 rent with leave to reapply.

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 sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1,350.00 for rent owed for February 2018 and 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: March 27, 2018

Residential Tenancy Branch