



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 26, 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 which indicates the registered mailing was sent on March 22, 2018. 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 27, 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 May 25, 2015, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on June 01, 2015;

- A copy of a Notice of Rent Increase form showing the rent being increased from \$1,500.00 to the current monthly rent amount of \$1,535.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated March 06, 2018 for \$605.00 in unpaid rent. 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 March 23, 2018;
- A copy of a utility bill for the rental unit with a note that the tenant owes \$95.00 per month which brings the monthly rent to \$1,630.00;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent by registered mail to the tenant on March 08, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.
- Two copies of electronic payments from the tenant to the landlord which indicate that, of the \$650.00 identified as owing in the 10 Day Notice, \$400.00 was paid on March 14, 2018, and \$150.00 was paid on March 22, 2018.

Analysis

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 March 13, 2018, five days after its mailing.

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,535.00, as per the tenancy agreement and the Notice of Rent Increase form.

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 effective date of the 10 Day Notice, March 23, 2018.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is 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.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent that was owed for March 2018 as of March 19, 2018.

As the landlord was successful in obtaining an Order of Possession 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 \$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: March 28, 2018

Residential Tenancy Branch