



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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 form which declares that on April 17, 2018, the landlord's agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 tenant has been deemed served with the Direct Request Proceeding documents on April 22, 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 the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on March 12, 2015, indicating a monthly rent of \$750.00, due on the first day of each month for a tenancy commencing on March 28, 2015;
- Copies of "Notice of Rent Increase" forms, provided to the tenant during the course of the tenancy, which demonstrate that the monthly rent was increased to the current amount of \$830.00;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$3.00 for outstanding rent, comprised of the balance of unpaid rent which the landlord asserts is owed by April 01, 2018. The landlord indicates that \$808.00 was owed for rent for April 2018, and the tenant provided a payment of \$830.00 on April 11, 2018;
- A copy of a receipt, dated April 11, 2018, which shows that the tenant provided a payment of \$830.00, which was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 02, 2018, which the landlord states was served to the tenant on April 02, 2018, for \$808.00 in unpaid rent due on April 01, 2018, with a stated effective vacancy date of April 15, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "NV" served the Notice to the tenant by way of posting it to the door of the rental unit on April 02, 2018. The Proof of Service form establishes that the service was witnessed by "MW" and a signature for "MW" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all 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 tenant is 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 tenant is deemed to have received the Notice on April 05, 2018, three days after its posting.

I find that, based on the evidentiary material provided by the landlord, the tenant was obligated to pay monthly rent in the amount of \$808.00 for the month of April 2018, and accept the

landlord's undisputed evidence and find that the tenant 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.

Section 46 of the *Act* provides, in part, the following:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The landlord provided that the for the month of April 2018, the tenant was expected to pay rent in the amount of \$808.00. I accept the evidence before me that the tenant had failed to pay rental arrears in the amount of \$808.00, comprised of the balance of unpaid rent owed by April 01, 2018 for the month of April 2018, within the five days granted under section 46 (4) of the *Act*.

The landlord has provided evidence to demonstrate that the tenant did subsequently provide payment which satisfied the full amount owed for the monthly rent for April 2018; however, the full payment was not provided within five days of receipt of the Notice and did not adhere to the timelines set out in section 46(4) of the *Act*.

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 Notice, April 15, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the April 02, 2018 Notice served to the tenant for unpaid rent owing for April 2018.

As part of the monetary claim established on the Application for Dispute Resolution by Direct Request, the landlord has included unpaid amounts owed for late fees associated with late payment of rent. As reimbursement for additional fees, such as late payment fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent as indicated on the April 02, 2018 Notice to End Tenancy served to the tenant, which alerts the tenant to unpaid rent owed by April 01, 2018, in the amount of \$808.00.

The landlord provided a copy of a receipt, dated April 11, 2018, which demonstrates that a payment of \$830.00 was provided by the tenant, and was acknowledged by the landlord as being received for use and occupancy only. The landlord provided evidentiary material to demonstrate that for April 2018, the tenant owed rent in the amount of \$808.00

Based on the evidentiary material before me, I find that the receipt provided by the landlord demonstrates that the tenant has paid the full balance of the unpaid rent owed for April 2018, which formed the basis of the landlord's monetary claim arising from unpaid rent. Therefore, I dismiss the landlord's application for a monetary Order based on unpaid rent owed for April 2018 without leave to reapply.

However, as the tenant provided payment of the unpaid rent for April 2018 beyond the five days provided after receipt of the Notice, as provided by the *Act*, it remains open to the landlord to accept the late payment for use and occupancy only and pursue an Order of Possession based on the April 02, 2018 Notice initially issued to the tenant for unpaid rent.

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 application for a monetary Order based on unpaid rent owed for April 2018 without leave to reapply

I grant an Order of Possession to the landlords 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 landlords are entitled to a monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlords are 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: April 26, 2018

Residential Tenancy Branch