



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed and witnessed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 18, 2018 the landlords served the tenant Notice of Direct Request Proceeding by placing the documents on the tenant’s door or other noticeable place. Based on the written submissions of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed served with the Direct Request Proceeding documents on November 21, 2018, the third day after their posting.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding indicating that the Direct Request Proceeding documents were served on the tenant by placing the documents on tenant's door or other noticeable place at 10:35 a.m. on November 18, 2018. This Proof of Service of the Notice of Direct Request Proceeding indicates that the service was witnessed by an individual named "M.A.";
- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on June 16, 2018, indicating a monthly rent of \$825.00, due on the first day of the month for a tenancy commencing on July 01, 2018;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted \$1,650.00 in unpaid rent for October and November 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the November 10 Day Notice) dated November 01, 2018, for \$1,650.00 in unpaid rent owing for October 2018 and November 2018, with stated move out date of November 11, 2018;
- A copy of the Proof of Service 10 Day Notice to End Tenancy for Unpaid Rent indicating that the November 10 Day Notice dated November 01, 2018 was served on the tenant by placing the documents on the tenant's door or other conspicuous place at 6:30 a.m. on November 1, 2018. This Proof of Service 10 Day Notice to End Tenancy for Unpaid Rent indicates that the service was witnessed by an individual named "M.A."; and
- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent (the July 10 Day Notice) which states a move out date of July 24, 2018. The July 10 Day Notice is not signed or dated and the landlord's or agent's name was not written on the notice. There was no proof of service of the July 10 Day Notice.

Analysis

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 of 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.

The landlords have claimed that they have served tenant with three 10 Day Notices to End Tenancy for Unpaid Rent: a July 10 Day Notice; a 10 Day Notice dated October 10, 2018; and a November 10 Day Notice.

(a) July 10 Day Notice

Section 52 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

“Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be **signed and dated** by the landlord or tenant giving the notice.”
(**Emphasis** added)(Section 52 (a) of the *Act*)

I find that the July 10 Day Notice is ineffective because it was not signed or dated as required by the *Act*.

In addition, the landlords must prove that they served the tenants with the 10 Day Notice in accordance with section 88 of the *Act*. However, in this matter the landlords have not submitted any proof of service of the July 10 day Notice.

For the foregoing reasons, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession and a Monetary Order on the basis of the July 10 Day Notice without leave to reapply. The July 10 Day Notice is cancelled and of no force or effect.

(b) October 10 Day Notice

I am unable to find that the October 10 Notice was effective because the landlords did not submit a copy of the October 10 Day Notice with this dispute resolution request. Therefore I dismiss the landlord’s application to end this tenancy and obtain an Order of

Possession and a Monetary Order on the basis of the October 10 Day Notice with leave to reapply.

(c) November 10 Day Notice

Section 46 (1) of the *Act* outlines the grounds on which to issue a notice to end tenancy for non-payment of rent:

“Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day **after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”**(**Emphasis** added)(Section 46 (1) of the *Act*)

I find that the tenancy agreement indicates that the monthly rent is due on the first of every month. Since Section 46 (1) of the *Act* requires the 10 Day Notice to be served after the due date and the monthly rent was due on November 1, 2018, Landlord could not issue the 10 Day Notice for November’s rent until on or after November 02, 2018. However, in this matter the landlord issued the 10 Day Notice on November 01, 2018 which is not in accordance with section 46 of the *Act*.

For this reason, the landlord’s application for a Monetary Order for unpaid rent owing for November 2018 is dismissed with leave to reapply.

However, I find that the November 10 Day Notice also contained amounts owing for October 2018, which were outstanding at the time the November 10 Day Notice was issued.

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 November 10 Day Notice on November 4, 2018, three days after the notice was posted on tenant’s door or other conspicuous place.

I find that the tenant was obligated to pay the monthly rent for October 2018 in the amount of \$825.00, as per the tenancy agreement.

I accept the evidence before me that the tenant has failed to pay the rent owed for October in full within the five days granted under section 46(4) of the *Act* and did not dispute the November 10 Day Notice within that five day period.

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 November 10 Day Notice, November 14, 2018. Therefore, I find that the landlords are entitled to an Order of Possession.

However, I am unable to find that landlords are entitled to a Monetary Order for the October rent because the landlords have not properly served the Notice of Direct Request Proceeding for a Monetary Order.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be given to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notice of Direct Request Proceeding to the door of the rental unit at which the tenant resides, and for this reason, the monetary portion of the landlords' application for unpaid rent is dismissed, with leave to reapply.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' application for an Order of Possession on the basis of the July 10 Day Notice is dismissed, without leave to reapply. The July 10 Day Notice is cancelled and of no force or effect.

The landlords' application for an Order of Possession on the basis of the October 10 Day Notice is dismissed, with leave to reapply.

I grant an Order of Possession to the landlords 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.

The landlords' application for an Order of Possession on the basis of the November 10 Day Notice is dismissed, with leave to reapply.

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: November 22, 2018

Residential Tenancy Branch