



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 September 18, 2020, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service forms establish that the service was witnessed by “PC” and a signature for “PC” is included on the forms. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on September 18, 2020.

Although an individual identified as “PC” is included on the application for dispute resolution as an applicant landlord, “PC” is not listed as a landlord on the tenancy agreement. As neither the name nor signature for “PC” appears on the tenancy agreement to demonstrate that “PC” entered into a tenancy agreement with the tenants, I will consider the application with “JB” being the sole landlord, and amend the application, in accordance with section 64(3)(c), to exclude “PC” as a party to this dispute.

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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$3,000.00.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$1,350.00 due on the third day of each month for a tenancy commencing on March 03, 2020;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$1,350.00, comprised of the unpaid rent due by September 03, 2020. The landlord also indicates that unpaid rent is owed for the months of July 2020 and August 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 04, 2020, which the landlord states was served to the tenant on September 04, 2020, for \$1,350.00 in unpaid rent due on September 03, 2020, with a stated effective vacancy date of September 15, 2020; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant

“JJ” on September 04, 2020. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are 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 documentary evidence provided by the landlord and find that in accordance with section 88 of the Act the tenants were duly served with the Notice on September 04, 2020.

Policy Guideline 52 “COVID-19: Repayment Plans and Related Measures” and the *COVID-19 Related Measures Act* (“C19 Act”) provide guidelines with respect to rent owed for the months included in the period defined as the “specified period.” Policy Guidelines 52 provides, in the part, the following:

The “specified period” is the period between March 18, 2020 and August 17, 2020 (as this date was earlier than the date on which the state of emergency expires or is cancelled). If, for example, the tenancy agreement stipulates that rent is paid on the first of each month, then the following rent payments were due within the specified period and are affected rent: April 1, 2020; May 1, 2020; June 1, 2020; July 1, 2020 ; and August 1, 2020

Policy Guidelines 52 provides, in the part, the following with respect to “affected rent”:

“Affected rent” means rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

The *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* (“C19 Tenancy Regulation”), was made under sections 10.1 and 10.2 of the *Emergency Program Act* (EPA) on August 14, 2020.

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant

relationship because the tenancy has ended, a repayment plan would not be required. A landlord cannot pursue an eviction for unpaid affected rent unless they have already given a valid repayment plan or there is a valid prior agreement still in effect.

I find that the landlord has not adhered to the requirements as cited in the C19 Tenancy Regulation, C19 Act, and Policy Guideline 52 as the landlord has not provided any evidentiary material to demonstrate that the parties to the tenancy entered into a payment plan, or had a prior agreement, with respect to the rent owed by July 03, 2020 and August 03, 2020, which falls within the specified period. Therefore, I dismiss with leave to reapply, the portion of the landlord's monetary claim with respect to unpaid rent owed for the months of July 2020 and August 2020, which was due by July 03, 2020 and August 03, 2020. I will limit my consideration of the landlord's monetary claim to the unpaid rent claimed as being owed by September 03, 2020, which falls outside of the specified period.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,350.00, 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 \$1,350.00, comprised of the balance of unpaid rent owed by September 03, 2020.

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 effective date of the Notice, September 15, 2020.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,350.00 for unpaid rent owed by September 03, 2020, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

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(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 \$1,450.00 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: October 07, 2020

Residential Tenancy Branch