



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

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 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 June 27, 2013, the landlord sent a Notice of Direct Request Proceeding by registered mail to the correctly named and spelled tenant whose name appears on the Residential Tenancy Agreement. The landlord provided a copy of the Canada Post Tracking Number to confirm this mailing.

Based on the written submissions of the landlord, I find that the correctly named and spelled tenant has been duly served with the Direct Request Proceeding documents.

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 against the respondent named in the landlord’s application pursuant to section 67 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 Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the correctly named and spelled tenant, indicating a monthly rent of \$1,050.00 due on the 1st day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant’s door on June 12, 2013, with a stated effective vacancy date of June 22, 2013, for \$1,050.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenant failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 10:00 a.m. on June 12, 2013. In accordance with section 88 and 90 of the *Act*, I find that the correctly named and spelled tenant was deemed served with this 10 Day Notice on June 15, 2013, three days after its posting.

The Notice states 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. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been deemed served with notice to end tenancy as declared by the landlord. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the correctly named and spelled tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 15, 2013. Therefore, I find that the landlord is entitled to an Order of Possession. Despite the error in the spelling of the tenant's name, I am able to issue an Order of Possession against the person identified as the respondent in the landlord's application for dispute resolution as well as anyone occupying the rental premises.

I find that the name on the landlord's application for dispute resolution, although similar to that of the tenant, is spelled incorrectly. As such, I cannot issue a monetary Order in the landlord's favour as requested, as this name does not match with that of the name listed on the Residential Tenancy Agreement, or any of the other documents submitted by the landlord. I also note that the landlord has not provided any rent ledger or summary of rent owing for this tenancy. It would seem that the tenant (or someone acting on the tenant's behalf) made at least a partial payment of a substantial portion of the \$1,050.00 identified as owing in the landlord's 10 Day Notice. The landlord's application requested the issuance of a monetary award of \$421.00. However, the landlord provided no record to document any payments made towards the \$1,050.00 identified as owing on June 12, 2013. Without such information, it becomes difficult to issue a monetary award in the landlord's favour.

While the landlord's failure to provide detailed records regarding the payment of rent during the latter stages of this tenancy could be remedied through receiving sworn oral testimony at a participatory hearing, I do not find that the basic flaw in the landlord's application for dispute resolution could be corrected even if I were to adjourn this portion of the landlord's application to a participatory hearing. Under these circumstances, I dismiss the landlord's application for a monetary award with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant identified on the Order or anyone else occupying the rental premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary award 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: July 22, 2013

Residential Tenancy Branch

