



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

The landlord submitted signed and witnessed two Proofs of Service of the Notices of Direct Request Proceeding which declares that on September 20, 2014, the landlord handed the male tenant the Notices of Direct Request Proceedings. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the male tenant has been deemed served with the Direct Request Proceeding documents on September 20, 2014, as declared by the landlord.

In accordance with section 89(2)(c) of the *Act*, I find that the female tenant has been served with the landlord’s application for an Order of Possession for unpaid rent. However, as the female tenant has not been served with a copy of the landlord’s application for a monetary award in accordance with section 89(1) of the *Act*, I dismiss the landlord’s application for a monetary award against the female tenant with leave to reapply.

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*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notices of Direct Request Proceeding served to the male tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 11, 2013, indicating a monthly rent of \$1,400.00 due on the 1st day of the month for a tenancy commencing on June 1, 2013;
- A Monetary Order Worksheet identifying \$500.00 in unpaid rent owing from August 2014, and a further \$1,400.00 owing from September 2014; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door at 7:40 p.m. on September 1, 2014, with a stated effective vacancy date of September 12, 2014, for \$1,900.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the tenants failed to pay all outstanding rent was served by posting the 10 Day Notice to the tenant's door at 7:40 p.m. on September 1, 2014. In accordance with sections 88 and 90 of the *Act*, the tenants were deemed served with this 10 Day Notice on September 4, 2014, three days after its posting.

The Notice states that the tenants 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 tenants 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 tenants have been deemed served with notice to end tenancy as declared by the landlord.

I find that as of the date the landlord served the tenants with the 10 Day Notice, September 1, 2014, only \$500.00 the amount identified as owing on the 10 Day Notice was actually outstanding. It was not until the following day that an additional \$1,400.00 became owing from September 2014. Although the landlord's 10 Day Notice identified an incorrect amount that was owing as of the time of the posting of the 10 Day Notice, I accept the evidence before me that the tenants have failed to pay the \$500.00 that was legally owed by the tenants on September 1, 2014 and was included in the \$1,900.00 identified as owing on the 10 Day Notice within the 5 days granted under section 46 (4) of the *Act*.

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 corrected effective date of the 10 Day Notice, September 14, 2014.

Therefore, I find that the landlord is entitled to an Order of Possession. I also find that the landlord is entitled to a monetary Order of \$1,900.00 for unpaid rent owing from August and September 2014 still owing when the landlord applied for dispute resolution on September 12, 2014. As the female tenant was not served with notice of the landlord's application for a monetary award in accordance with section 89(1) of the *Act*, the landlord's monetary Order is solely against the male tenant.

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 section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,900.00 against the male tenant for rent owed as of September 12, 2014. The landlord is provided with these Orders in the above terms and the male tenant must be served with **this Order** as soon as possible. Should the male tenant 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.

The landlord's application for a monetary award against the female tenant 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: September 25, 2014

Residential Tenancy Branch

