



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Group
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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on January 26, 2015, the landlord served the above-named tenants the Notice of Direct Request Proceeding by registered mail. The landlord provided two copies of the Canada Post Customer Receipt containing the Tracking Number to confirm these mailings.

Based on the written submissions of the landlord, and in accordance with section 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on January 31, 2015, 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 and utilities 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 Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on January 22, 2013, indicating a monthly rent of \$1,150.00 due on the 1st day of the month for a tenancy commencing on February 1, 2013;
- A note provided by the landlord which details that on October 1, 2013, monthly rent under for this tenancy was reduced to \$1,100.00 from \$1,150.00;

- A Monetary Order Worksheet on which the landlord establishes a monetary claim in the amount of \$1,452.00, comprised of outstanding rent in the amount of \$1,100.00 for January 2015 and unpaid utilities in the amount of \$352.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 15, 2015 (the Notice) which the landlord states was served to the tenant on January 15, 2015 for \$1,110.00 in unpaid rent due on January 1, 2015, and \$352.00 in unpaid utilities due on December 10, 2014, with a stated effective vacancy date of January 25, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenants by way of posting it to the door of the rental unit at 7:30 pm on January 15, 2015. The Proof of Service establishes that the service was witnessed by "CH" and a signature for CH is 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

Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. Pursuant to sections 88 and 90 of the Act, I have reviewed all documentary evidence and accept that the tenants are deemed to have received the Notice on January 18, 2015, three days after its posting.

As part of his application for a monetary Order, the landlord indicated on the monetary order worksheet that he seeks \$352.00 for unpaid utilities. Section 46(6) of the Act provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Although the tenancy agreement does stipulate that the tenants are required to pay a portion of the utilities with respect to the rental unit, the landlord has not provided any documentary evidence to establish that the provisions of section 46(6) of the Act were adhered to. The landlord has not provided a copy of a written demand served to the tenants to direct them to pay the outstanding amount owed for the portion of the utilities they are expected to pay under the agreement. I find that as the landlord has not followed the requirements under section 46(6) of the Act, it is not open for the landlord to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that

portion of the landlord's application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlord's request for a monetary Order to the unpaid rent claimed as owing to the landlord.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,100.00, as amended on October 1, 2013. I accept the evidence before me that the tenants have failed to pay \$1,100.00 in rent for the month of January 2015. I find that the tenants received the Notice on January 18, 2015. I accept the landlord's undisputed evidence and find that the tenants did not pay the the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that 5-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 corrected effective date of the 10 Day Notice, January 28, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,100.00 for unpaid rent owing for January 2015, as of January 26, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 \$1,100.00 for rent owed for January 2015, as of January 26, 2015. 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.

I dismiss the landlord's application for a monetary Order for unpaid utilities 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: February 11, 2015

Residential Tenancy Branch

