



Dispute Resolution Services

Page: 1

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’ agent “MF” submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 11, 2015, at 8:00 pm, the landlord’s agent MF served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The personal service was additionally confirmed as the Proof of Service establishes that the service was witnessed by “RB” and a signature for RB is included on the form.

Based on the written submissions of the landlords, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on February 11, 2015.

Issue(s) 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*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on September 11, 2014, indicating a monthly rent of \$2,100.00 due on the 1st day of the month for a tenancy commencing on October 1, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$600.00. The landlords indicate that monthly rent owed for February 2015 is \$2,100. A partial payment of \$1,500.00 was received, resulting in a balance of rent owed in the amount of \$600.00 for February 2015;
- A printed copy of an email dated January 20, 2015, confirming that the tenant provided partial payment in the amount of \$1,500.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2015 (the Notice), which the landlords state was served to the tenant on February 2, 2015 for \$600.00 in unpaid rent due on February 2, 2015, with a stated effective vacancy date of February 10, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlords' agent "NG" served the Notice to the tenant at 3:20 pm on February 2, 2015 by way of leaving the Notice at the rental unit with an adult who apparently resides with the tenant. The landlords' agent NG confirms that she delivered the notice to an adult "KS" who resides with the tenant and KS acknowledged receipt of the Notice by signing the Proof of Service form. The landlords' agent MF also provided a signed statement dated February 5, 2015 in which she attests to witnessing KS sign the Proof of Service form acknowledging receipt of the Notice.

The Notice restates section 46(4) of the Act which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenant was served with the Notice on February 2, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,100.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$600.00 in rental arrears with respect to rent owed for February 2015. I find that the tenant received the Notice on February 2, 2015. I accept the landlords' undisputed evidence and find that the tenant did not pay 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 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 Notice, February 12, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$600.00 for unpaid rent owing for February 2015, as of February 11, 2015.

Conclusion

I grant an Order of Possession to the landlord(s) 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 landlords are entitled to a monetary Order in the amount of \$600.00 for rent owed for February 2015, as of February 11, 2015. The landlords are provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the 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.

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 13, 2015

Residential Tenancy Branch

