



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 submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 6, 2015, the landlords’ agent served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords’ agent provided two copies of the Canada Post Customer Receipt containing the Tracking Number to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on February 11, 2015, the fifth day after their registered mailing.

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:

- Copies 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 landlords on March 22, 2014 and signed by the tenants on March 28, 2014, indicating a monthly rent of \$1,320.00 due on the 20th day of the month for a tenancy commencing on March 20, 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 total monetary claim in the amount of \$3,680.00. The landlords indicate that there is unpaid rent in the amount of \$1,320.00 owing for August 2014, \$1,320.00 owing for October 2014, \$520.00 owing for December 2014, and \$520.00 owing for January 2015. Partial payment of \$800.00 was received for December 2014 and another partial payment of \$800.00 was received for January 2015, resulting in a total balance of unpaid rent in the amount of \$3,680.00;
- A receipt dated December 24, 2014 confirming partial payment of \$800.00 and a receipt dated January 27, 2015 confirming partial payment of \$800.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 21, 2015, which the landlords state was served to the tenants on January 21, 2015 for \$3,960.00 in unpaid rent due on January 20, 2015, with a stated effective vacancy date of January 5, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlords' agent served the Notice to the tenants by way of registered mail. The landlords' agent provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 landlords. Section 90 of the Act provides that because the Notice was served by registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the the tenants are deemed to have received the Notice on January 26, 2015, five days after its mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,320.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the outstanding rental arrears of \$3,960.00, resulting from rent owed for the months of August 2014, October 2014, December 2014, and January 2015. I find that the tenants received the Notice on January 26, 2015. I accept the landlords'

undisputed evidence and find that the tenants did not pay the rental arrears 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 Notice, February 5, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$3,680.00 for unpaid rent owing as of February 6, 2015.

Conclusion

I grant an Order of Possession to the landlords 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 landlords are entitled to a monetary Order in the amount of \$3,680.00 for rent owing as of February 6, 2015. The landlords are 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: February 17, 2015

Residential Tenancy Branch

