



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 12, 2015, at 8:50 pm, the landlord served the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as each tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on February 12, 2015.

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 Notice of Direct Request Proceeding served to each tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the two tenants named as respondents in this application (the tenants) on April

11, 2007, indicating a monthly rent of \$1,400.00 due on the first day of the month for a tenancy commencing on May 1, 2007;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$6000.00, which is comprised of outstanding rental arrears in the following amounts: \$1,400 owing for March 2014, \$700.00 owing for each of April 2014, May 2014, October 2014, and November 2014; \$400.00 owing for December 2014; and \$1,400.00 owing for January, resulting in a balance of rental arrears in the amount of \$6,000.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2015 (the Notice), which the landlord states was served to the tenants on February 3, 2015, for \$7,400.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 20, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery at 11:30 am on February 3, 2015. The personal service was confirmed as the male tenant acknowledged receipt of the Notice by signing the Proof of Service form on February 3, 2015.

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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on February 3, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,400.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$6,000.00. I find that the tenants received the Notice on February 3, 2015. I accept the landlord's undisputed evidence and find that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, February 20, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$6,000.00 for unpaid rent owing as of February 12, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **on February 20, 2015**. 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 \$6,000.00 for rent owed as of February 12, 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.

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 16, 2015

Residential Tenancy Branch

