



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 13, 2015, at 7:20 pm, the landlord 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 Proof of Service establishes that the service was witnessed by "MF" and a signature for MF is included on 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 tenant has been duly served with the Direct Request Proceeding documents on February 13, 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 the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on December 2, 2014, indicating a monthly rent of \$870.00 due on the first day of the month for a tenancy commencing on December 1, 2014;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$870.00 for rent and utilities owing for February 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) dated February 2, 2015, which the landlord states was served to the tenant on February 2, 2015, for \$850.00 in unpaid rent and \$20.00 in unpaid utilities due on February 2, 2015, with a stated effective vacancy date of February 11, 2015; and;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery on February 2, 2015. The Proof of Service establishes that the service was witnessed by "MF" and a signature for MF is included on the form.

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 duly served with the Notice on February 2, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$870.00, as established in the tenancy agreement. The addendum included with the tenancy agreement stipulates that the monthly amount of \$870.00 is calculated based on \$850.00 per month for rent and a standard fixed amount of \$20.00 per month for utilities, which comprises the standard amount of \$870.00 established as monthly rent under the tenancy agreement. I find that the tenancy agreement establishes that a single fixed sum of \$870.00 is to be paid per month as rent and does not require that a fluctuating amount be paid by the tenant for utilities.

I accept the evidence before me that the tenant has failed to pay \$870.00 in rent for the month of February 2015. I find that the tenant received the Notice on February 2, 2015. I accept the landlord's 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 landlord is entitled to an Order of Possession and a monetary Order of \$870.00 for unpaid rent owing for February 2015, as of February 13, 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 \$870.00 for rent owed for February 2015, as of February 13, 2015. The landlord is 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 17, 2015

Residential Tenancy Branch

