



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

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 17, 2015, the landlord’s agent “KL” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on February 22, 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 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’s agent and the tenant on December 11, 2007, indicating a monthly rent of \$1,027.00, due on the last day of the month preceding the month for which rent is due, for a tenancy commencing on January 1, 2008;

- The landlord established the manner in which rent was raised from the initial \$1,027.00 stated in the tenancy agreement to the current amount of \$1,165.00 by providing copies of “Notice of Rent Increase” forms provided to the tenant during the course of the tenancy.
- 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 \$1,165.00 for outstanding rent owing for February 2015, as of February 17, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 1, 2015, which the landlord states was served to the tenant on February 1, 2015, for \$1,190.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of January 11, 2015;
- A copy of a “Notice of Late Rent” note dated January 31, 2015, in which the tenant is advised of unpaid rent. The landlord notes that rent in the amount of \$1,165.00 is outstanding and includes a late charge fee of \$25.00, resulting in a balance of \$1,190.00, which is the same amount listed on the Notice. A late payment fee will not be addressed in the Direct Request process and the \$25.00 late fee does not form part of the late landlord’s monetary claim for unpaid rent in the amount of \$1,165.00; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent KL served the Notice to the tenant by way of personal service via hand-delivery at 9:00 am on February 1, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service 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 1, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,165.00, as the landlord has established that the monthly rent amount was raised in an appropriate manner from the initial amount of \$1,027.00.00, as established in the tenancy agreement, to the current amount of \$1,165.00. I accept the evidence before me that the tenant has failed to pay \$1,165.00 in rent for the month of February 1, 2015, which was due on January 31, 2015. I find that the tenant received the Notice on February 1,

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 10, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,165.00 for unpaid rent owing for February 2015, as of February 17, 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 \$1,165.00 for unpaid rent owing for February 2015, as of February 17, 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 23, 2015

Residential Tenancy Branch

