



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

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 17, 2015, the landlord's agent "CB" served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord 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 landlord, 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 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:

- Two 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 landlord's agent and the tenant "KS" on May 28, 2014, indicating a monthly rent of \$1,100.00 due on the first day of the month for a tenancy commencing on June 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 \$1,100.00 for outstanding rent owing for February 2015;
- A "tenant ledger" which details the amount of rent owing and payments made by the tenants. The ledger shows that rent owing for February 2015 is established to be \$1,100.00 with a \$25.00 late fee from January 2015 added to bring the total amount owed to \$1,125.00, which is the amount listed on the 10 Day Notice to End Tenancy for Unpaid Rent. Late fees will not be addressed in the Direct Request process and I note that the landlord is not claiming the late fee as part of the monetary claim;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 4, 2015, which the landlord states was served to the tenants on February 4, 2015, for \$1,125.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 14, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent CB served the Notice to the tenants by way of posting it to the door of the rental unit at 3:08 pm on February 4, 2015. The Proof of Service establishes that the service was witnessed by "CB" and a signature for CB is included on the form.

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 tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on January 9, 2015, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,100.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay \$1,100.00 in rent for the month of February 2015. I find that the tenants received the Notice on February 7, 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 corrected effective date of the Notice, February 17, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,100.00 for unpaid rent owing for February 2015, as of February 16, 2015. I additionally find that although there are two tenants listed on the tenancy agreement, only tenant KS signed the tenancy agreement, and will therefore grant Orders only against tenant KS.

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 \$1,100.00 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(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 25, 2015

Residential Tenancy Branch

