



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 18, 2015, the landlords served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlords 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 landlords, 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 23, 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:

- 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 landlords and the tenant on March 17, 2014, indicating a monthly rent of \$895.00 due on the first day of the month for a tenancy commencing on March 17, 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 monetary claim in the amount of \$1,140.00 for outstanding rent. The landlords indicate that there is outstanding rent owing for January 2015 in the amount of \$245.00 and outstanding rent owing for February 2015 in the amount of \$895.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 2, 2015, which the landlords state was served to the tenant on February 2, 2015, for \$1,165.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 12, 2015. On the monetary order worksheet, the landlords clarified that outstanding rent owing was \$1,140.00 and a \$25.00 late fee was added to bring the total amount indicated on the Notice to \$1,165.00. The landlords are not seeking the \$25.00 late fee as part of their monetary claim via this application;
- A copy of the Proof of Service of the Notice showing that the female landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 6:47 pm on February 2, 2015. The Proof of Service establishes that the service was witnessed by the male landlord and a signature for the male landlord 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 provided by the landlords. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is 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 tenant is deemed to have received the Notice on February 5, 2015, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$895.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$1,140.00 in rent for the months of January 2015 and February 2015. I find that the tenant received the Notice on February 5, 2015. I accept the landlords' 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 5, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,140.00 for unpaid rent owing as of February 18, 2015.

Conclusion

I grant an Order of Possession to the landlords 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 landlords are entitled to a monetary Order in the amount of \$1,140.00 for unpaid rent owing as of February 18, 2015. The landlords are 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 26, 2015

Residential Tenancy Branch

