



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 Proceedings which declares that on February 19, 2015, the landlord personally served both of the Notices of Direct Request Proceedings to Tenant J.N. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceedings to confirm personal service to Tenant J.N.

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 and unpaid utilities 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 Proceedings;
- A copy of a BC Hydro bill for the rental unit, in the amount of \$235.43, dated January 12, 2015;
- A copy of a Fortis bill for the rental unit, in the amount of \$454.04, dated January 07, 2015;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on October 31, 2014, indicating a monthly rent of \$1,800.00 due on the first day of the month for a tenancy commencing on November 01, 2014;
- A Monetary Order Worksheet showing the rent and utilities owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 02, 2015 and posted on the tenants' door on February 02, 2015, with a stated effective vacancy date of February 02, 2015, for \$2,100.00 in unpaid rent and \$711.47 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 10:00 (a.m. or p.m. not indicated) on February 02, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on February 05, 2015, three days after its posting.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. This section reads in part as follows:

Special rules for certain documents

89 (1) An application for dispute, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(c) by sending a copy by registered mail to the address at which the person resides...

(2) An application by a landlord under section 55 [*order of possession for the landlord*], ...must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant only when considering an Order of Possession for the landlord.

I find that the Notice of Direct Request Proceedings were both personally served to Tenant J.N. and that the service requirement of section 89 (1) of the *Act* has only been met in regards to Tenant J.N.

Based on the written submissions of the landlord and in accordance with section 89 (1) of the *Act*, I find that Tenant J.N. has been duly served with the documents on February 19, 2015.

Based on the written submissions of the landlord and in accordance with section 89 (2) of the *Act*, I find that Tenant P.M. has been duly served with the documents on February 19, 2015, in consideration of the Order of Possession only.

Therefore, I dismiss the monetary portion of the landlord's application against Tenant P.M. with leave to reapply.

Section 46 (6) of the *Act* establishes that "if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section."

I find that the dates of the utility bills were less than 30 days from the time that the 10 Day Notice was served to the tenants and that not enough time has passed, in accordance with Section 46 (6) of the *Act*, to allow the landlord to treat the unpaid utilities as unpaid rent. I further find that there is no written demand in the landlord's evidence submissions which would indicate that more than 30 days had passed before the 10 Day Notice was served to the tenants.

Therefore, I dismiss the landlord's application against Tenant J.N. for a monetary Order in regards to unpaid utilities, with leave to reapply.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,800.00 as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, February 15, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession for this tenancy and a monetary Order against Tenant J.N. in the amount of \$2,100.00, the amount claimed by the landlord for unpaid rent owing for January 2015 and February 2015 as of February 18, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 \$2,100.00 for rent owed for January 2015 and February 2015. The landlord is provided with this Order in the above terms and Tenant J.N. must be served with **this Order** as soon as possible. Should Tenant J.N. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a monetary Order in regards to unpaid utilities with leave to reapply.

I dismiss the landlord's application for a monetary Order naming Tenant C.R. as a respondent with leave to reapply.

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: March 09, 2015

Residential Tenancy Branch

