



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXSAVE REAL ESTATE SERVICES LTD (AGENT)
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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 21, 2015, at 2:24 pm, the landlord’s agent “LS” 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 form establishes that the service was witnessed by a different individual identified as “LS” and a signature for the witness LS is included on the 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 21, 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’s agent and the tenant on January 16, 2015, indicating a monthly rent of \$650.00 due on the first day of the month for a tenancy commencing on January 17,

2015. The tenancy agreement included a clause that stipulated that rent would be increased by an amount of \$100.00 for an additional occupant;

- 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 \$175.00 for outstanding rent owed for February 2015. The landlord indicates that rent owed for February 2015 was \$750.00 and a partial payment of \$575.00 was received on February 6, 2015, resulting in a balance of rent owed in the amount of \$175.00;
- A copy of a receipt dated February 6, 2015, which establishes that a partial payment of \$575.00 was received from the tenant toward rent owed for February 2015;
- A copy of a letter drafted by the landlord, dated February 3, 2015, in which the landlord notified the tenant that rent would increase by \$100.00 in accordance with a clause in the tenancy agreement that permits for a rent increase of \$100.00 for additional occupants;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 12, 2015, which the landlord states was served to the tenant on February 12, 2015, for \$175.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 22, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord's agent LS served the Notice to the tenant by way of personal service via hand-delivery at 1:51 pm on February 12, 2015. The Proof of Service establishes that the service was witnessed by "AM" and a signature for AM 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 12, 2015.

Section 13(2)(f) of the Act provides, in part, a provision which permits a landlord to establish a clause in a tenancy agreement to vary the monthly rent amount to account for additional occupants. Section 40 further establishes that rent raised for one or more additional occupants in accordance with section 13(2)(f) does not fall under the purview of rent increases as outlined in sections 41, 42, and 43 of the Act. The tenancy agreement signed by the parties included a clause which stipulated that rent would increase by an amount of \$100.00 for an additional occupant.

I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$175.00, comprised of the balance of rent identified as owing by the landlord for the month of February 2015. I find that the tenant received the Notice on February 12, 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 effective date of the Notice, February 22, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$175.00 for unpaid rent owing for February 2015, as of February 19, 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 \$175.00 for unpaid rent owing for February 2015, as of February 19, 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: March 04, 2015

Residential Tenancy Branch