



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 Proceeding forms which declare that on March 3, 2015 at 11:50 am, the landlord served the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding by providing their respective signatures on an attached sheet on which they attest receipt of the Notice of Direct Request Proceeding documents. The attached sheet provided by the landlord also establishes that the service was witnessed by “PJ” and a signature for PJ is provided.

Based on the written submissions of the landlord, and in accordance with section 89 of the Act, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 3, 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:

- 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 and the tenants on July 21, 2014, indicating a monthly rent of \$1,275.00 due on the first day of the month for a tenancy commencing on August 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 \$3,395.00 for outstanding rent. The landlord indicates that there is rent owed in the amount of \$1,275.00 for December 2014, \$1,275.00 owing for January 2015, and \$1,275.00 owing for February 2015, with a partial payment of \$430.00 received on January 21, 2015, resulting in a balance of \$3,395.00 of outstanding rent;
- A copy of a receipt dated January 21, 2015 confirming receipt of a partial payment from the tenant in the amount of \$430.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 18, 2015, which the landlord states was served to the tenants on February 18, 2015, for \$3,395.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of March 1, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant "MK" at 9:30 am on February 18, 2015. The Proof of Service establishes that the service was witnessed by "BB" and a signature for BB 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 tenants 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 tenants were duly served with the Notice on February 18, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,275.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$3,395.00 in rent for the months of December 2014, January 2015, and February 2015. I find that the tenants received the Notice on February 18, 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, March 1, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,395.00 for unpaid rent owing as of March 2, 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 \$3,395.00 for unpaid rent owing as of March 2, 2015. The landlord is provided with these Orders in the above terms and the tenant(s) 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: March 09, 2015

Residential Tenancy Branch

