



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 23, 2015, the landlord’s agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord 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. The Proof of Service form also establishes that the service was witnessed by “SK” and a signature for SK is included on the form.

Based on the written submissions of the landlord, 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 28, 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:

- 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 October 28, 2014, indicating a monthly rent of \$1,050.00 due on the first day of the month for a tenancy commencing on November 1, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,792.50 for outstanding rent owing as of February 19, 2015, which is comprised of rent owed for the months of December 2014, January 2015, and February 2015.
- A "Tenant Ledger" which details the rent owed and payments made during the course of the tenancy. This ledger details that the cumulative outstanding rent owed and total payments made by the tenant during the course of the tenancy result in an outstanding balance of \$1,792.50 for unpaid rent as of February 1, 2015;
- An undated "Mutual Agreement to End a Tenancy" form, signed by the landlord and tenant, which establishes that the signed parties agreed that the tenancy would end pursuant to the mutual agreement and that the tenant would vacate the rental unit at 1:00 pm on February 18, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 3, 2015, which the landlord states was served to the tenant on February 3, 2015, for \$1,792.50.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 13, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of registered mail. The Proof of Service of the Notice form does not indicate the date on which the Notice was served via registered mail. However, the landlord's agent has included a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The Canada Post website provides details associated with the tracking number which demonstrates that the registered mail item was received at the post office on February 3, 2015 and delivered on February 6, 2015 and subsequently signed-for by the tenant on February 6, 2015. The tenant's electronic signature is included as part of the tracking history to confirm receipt of the registered mail item on February 6, 2015.

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 landlord. Section 90 of the *Act* provides that because the Notice was served by registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, the tenant would be deemed to have received the Notice on February 8, 2015, five days after its posting. However, I find that based on the evidentiary material provided by the landlord, the Canada Post tracking history demonstrates that the tenant received, and signed-for, the registered mail item containing the Notice on February 6, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,050.00, 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 \$1,792.50, comprised of the balance of rent owed for the months of December 2014, January 2015, and February 2015. I find that the tenant received the Notice on February 6, 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 corrected effective date of the Notice, February 16, 2015.

I turn now to the copy of a "Mutual Agreement to End a Tenancy" form signed by both the landlord and tenant. Section 44 of the *Act* provides, in part, the following with respect to how a tenancy ends:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(ii) section 46 [*landlord's notice: non-payment of rent*];

(c) the landlord and tenant agree in writing to end the tenancy;

I find that the "Mutual Agreement to End a Tenancy" form signed by the parties had the effect of extending the effective date of the end of this tenancy from February 16, 2015, the corrected date shown on the Notice, to February 18, 2015. By virtue of its form and contents, and in accordance with the provisions of section 44(1)(c) of the *Act*, I find that the mutual agreement entered into by the parties effectively ended the tenancy on February 18, 2015, as agreed by the parties.

Therefore, based on the foregoing, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,792.50 for unpaid rent owing 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 \$1,792.50 for unpaid rent owing 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

