



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D & S DUPERRON PROPERTY HOLDINGS INC.
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 12, 2015, the landlord’s agent “ZG” 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.

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 17, 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 November 15, 2013, indicating a monthly rent of \$760.00 due on the first day of the month for a tenancy commencing on December 1, 2013;
- 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

\$1,950.00 for outstanding rent. The landlord indicates that there was rent owed in the amount of \$760.00 for December 2014, rent owed in the amount of \$760.00 for January 2015, and rent owed in the amount of \$760.00 for February 2015, with a partial payment of \$300.00 received on February 1, 2015;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 18, 2015, which the landlord states was served to the tenant on January 18, 2015, for \$1,520.00 in unpaid rent due on January 1, 2015, with a stated effective vacancy date of January 28, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent ZG served the Notice to the tenant by way of posting it to the door of the rental unit on January 18, 2015. The Proof of Service establishes that the service was witnessed by "AG" and a signature for AG 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 landlord(s). 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 January 21, 2015, three days after its posting.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's monetary order worksheet and the amount indicated on the Notice issued to the tenant. The sum of the rent owed and partial payment received, as indicated on the monetary worksheet, results in a balance of rent outstanding, as of February 6, 2015, in the amount of \$1,980.00, although the landlord requests a monetary order in the amount of \$1,950.00. The balance of rent owed in the amount of \$1,980.00 relies on the inclusion of rent owed in the amount of \$760.00 for February 2015.

However, the Notice issued to the tenants on January 18, 2015 is in the amount of \$1,520.00 for rent due by January 1, 2015, which, if compared against the information provided on the monetary worksheet, is comprised of rent owed in the amount of \$760.00 for each of December 2014 and January 2015. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for February 2015. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from February 2015, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the amount listed on the Notice issued to the tenant.

I find that the tenant was obligated to pay monthly rent in the amount of \$760.00, as established in the tenancy agreement. I accept the evidence before me that the tenant had failed to pay outstanding rental arrears in the amount of \$1,520.00 in rent for the months of December 2014

and January 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, January 31, 2015.

I find that the tenant owed outstanding rent in the amount of \$1,520.00 for the months of December 2014 and January 2015. The landlord indicated that partial payment of \$300.00 was received on February 1, 2015 toward the outstanding rental arrears. After applying the \$300.00 toward the rental arrears, I find that the tenant remains in arrears in the amount of \$1,220.00 resulting from rent owed for the months of December 2014 and January 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,220.00 for unpaid rent owing for December 2014 and January 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 \$1,220.00 for unpaid rent owing for December 2014 and January 2015, following the tenant's February 1, 2015 partial payment of \$300.00. 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 09, 2015

Residential Tenancy Branch

