



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOLANDA ABERSBACH DBA PIKESTAFF CONTRACTING
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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 22, 2015, the landlords served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords provided two copies of the Canada Post Customer Receipt containing the Tracking Number to confirm these mailings. 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 landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on February 27, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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's agent and the tenants on May 6, 2014, indicating a monthly rent of \$980.00 due on the first day of the month for a tenancy commencing on June 1, 2014;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of

\$1,140.00 for outstanding rent, comprised of \$380.00 owing for August 2014; \$180.00 owing for September 2014; and \$580.00 owing for January 2015.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 2, 2015, which the landlords state was served to the tenants on February 2, 2015, for \$980.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 15, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "CC" served the Notice to the tenants by way of posting it to the door of the rental unit on February 2, 2015. The Proof of Service establishes that the service was witnessed by "BL" and a signature for BL 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 provided by the landlords. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are 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 tenants are deemed to have received the Notice on February 5, 2015, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$980.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay \$980.00 in rent for the month of February 2015. I find that the tenants received the Notice on February 5, 2015. I accept the landlords' 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 effective date of the Notice, February 15, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession arising from an undisputed Notice served to the tenants resulting from unpaid rent for the month of February 2015.

I turn now to the landlord's application for a monetary Order in the amount of \$1,140.00. Although I find that the tenants have not paid rent for the month of February 2015, the landlords have not included the unpaid rental amount of \$980.00 for February 2015 as part of their monetary claim, and therefore, it is not before me to address unpaid rent from February 2015 as part of the monetary claim under this Direct Request application. It remains open for the landlords to pursue unpaid rent from February 2015 under a separate application if they so wish.

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I find that the landlords' monetary claim, as outlined in the monetary order worksheet, does not clearly establish the amount of rental arrears owed by the tenants. The landlords have indicated that partial rental arrears remain outstanding for the months of August 2014, September 2014, and January 2015, the sum of which results in total rental arrears of \$1,140.00. However, the most recent Notice, dated February 2, 2015, establishes that the tenants owe only an outstanding rental amount of \$980.00, and that payment of the full amount of \$980.00 would have set aside the most recent Notice for unpaid rent, thereby upholding the tenancy agreement and ensuring that the tenancy would continue. By alerting the tenants, on February 2, 2015, to an amount of \$980.00 in outstanding rent, it presents ambiguity as to whether the rental arrears from the preceding month remain outstanding.

While it may be inferred that the Notice was meant only to alert the tenants to the amount owing specifically for the month of February 2015, it leaves open the question of whether the rental arrears for the preceding months, which comprise the monetary claim under this application, remain outstanding. In short, there is a discrepancy with respect to the monetary amount for unpaid rent claimed on the monetary order worksheet and the amount indicated on the Notice which leaves open questions that cannot be clarified within the purview of the Direct Request process. Therefore, I dismiss the landlords' application for a monetary Order with leave to re-apply.

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.

I dismiss the landlords' application for a monetary Order 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 2, 2015

Residential Tenancy Branch

