



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 March 4, 2015, the landlord’s agent “LG” 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 March 9, 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 on July 14, 2014 and signed by the tenant on March 3, 2014, indicating a

monthly rent of \$1,300.00 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 \$2,600.00 for outstanding rent, comprised of rent owing for January 2015 in the amount of \$1,300.00 and rent owing for February 2015 in the amount of \$1,300.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 19, 2015, which the landlord states was served to the tenant on February 23, 2015, for \$2,600.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 27, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "LG" served the Notice to the tenant by way of registered mail on February 23, 2105. 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 19, 2015 and an attempt was made for delivery to the address listed by the landlord on February 23, 2014. A note was left advising the recipient that the item was available for pick-up at the Post Office. I find that the landlord served the Notice via registered mail on February 19, 2014.

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*, I find that the tenant is deemed to have received the Notice on February 24, 2015, five days after its mailing. The landlord has demonstrated, by way of evidentiary material provided, that service of the Notice was carried out by way of registered mail. The landlord also demonstrated that a copy of the Notice was slipped under the door of the rental unit. However, service of a Notice by slipping the Notice under a door is not permitted under the *Act*, and I will therefore rely on the landlord's evidence that establishes that the Notice was served via registered mail.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,300.00, 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 \$2,600.00 in rent for the months of January 2015 and February 2015. I find that the tenant received the Notice on February 24, 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, March 6, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,600.00 for unpaid rent owing for January 2015 and February 2015, as of March 3, 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 \$2,600.00 for unpaid rent owing for January 2015 and February 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 10, 2015

Residential Tenancy Branch

