



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 16, 2015, the landlord 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 21, 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 and the tenant on May 24, 2014, indicating a monthly rent of \$700.00 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 landlord establishes a monetary claim in the amount of \$790.00. The landlord indicates that monthly rent owed for February 2015 was \$700.00

and a partial payment of \$660.00 was received on February 16, 2015, resulting in a balance owing in the amount of \$40.00 for February 2015. There is unpaid rent in the amount of \$700.00 for March 2015. The landlord has also included, as part of his monetary claim, \$50.00 for recovery of the filing fee.

- 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 \$700.00 in unpaid rent due on February 1, 2015, with a stated effective vacancy date of February 14, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on February 3, 2015. The Proof of Service establishes that the service was witnessed by "PS" and a signature for PS 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. 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 February 6, 2015, three days after its posting.

As part of the monetary claim established on the monetary order worksheet, the landlord has also included \$50.00 for recovery of the filing fee. As reimbursement for fees such as the filing fee cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim, in the amount of \$740.00, which arises from unpaid rent.

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 March 16, 2015, in the amount of \$740.00. The balance of rent owed in the amount of \$740.00 relies on the inclusion of rent owed in the amount of \$700.00 for March 2015.

However, the Notice issued to the tenant on February 3, 2015 is in the amount of \$700.00 for rent due by February 1, 2015, which is comprised only of rent owed in the amount of \$700.00 for February 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 March 2015. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from March 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 with respect to rent owed for February 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$700.00, as established in the tenancy agreement. The landlord indicates that the tenant provided a partial payment of \$660.00 on February 16, 2015 toward rent for February 2015. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$40.00, comprised of the balance of rent owed for the month of 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.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$40.00 for unpaid rent owing for February 2015, as of March 16, 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 \$40.00 for unpaid rent owing for February 2015, as of March 16, 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 23, 2015

Residential Tenancy Branch

