



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 17, 2015, at 2:00 pm, the landlord’s agent “DM” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form. The Proof of Service forms also establishes that the service was witnessed by “CS” and a signature for CS is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on March 17, 2015.

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 May 31, 2011, indicating a monthly rent of \$785.00 due on the first day of the month for a tenancy commencing on June 1, 2011;
- 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 \$1,230.00 for outstanding rent.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 2, 2015, which the landlord states was served to the tenant on March 2, 2015, for \$1,230.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 12, 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 personal service via hand-delivery at 11:00 am on March 2, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service 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 and find that in accordance with section 88 of the *Act* the tenant was duly served with the Notice on March 12, 2015.

As part of the monetary claim established on the monetary order worksheet, the landlord has also included fees for which reimbursement cannot be sought by way of the Direct Request process. The landlord has included a \$25.00 late fee from January 2015 and a \$25.00 late fee from February 2015 which cannot form part of the monetary claim by way of the Direct Request process. As reimbursement for such fees cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent. With the exclusion of the aforementioned fees, the sum of the outstanding rent and partial payments made becomes \$1,180.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$785.00, 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 \$1,180.00, comprised of the balance of rent owed for the months of January 2015, February 2015, and March 2015. I find that the tenant received the Notice on March 2, 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 effective date of the Notice, March 12, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,180.00 for unpaid rent owing for January 2015, February 2015, and March 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 \$1,180.00 for unpaid rent owing for January 2015, February 2015, and March 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 20, 2015

Residential Tenancy Branch

