



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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit at 5:00 pm on March 13, 2015 . The Proof of Service form establishes that the service was witnessed by “MC” and a signature for MC is included on the form.

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 16, 2015, three days after their posting.

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*?

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 December 1, 2014, indicating a monthly rent of \$650.00 due on the first day of the month for a tenancy commencing on December 15, 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 \$1,300.00 for outstanding rent, comprised of rent owing in the amount

of \$650.00 for February 2015 and rent owing in the amount of \$650.00 for March 2015;

- A note from the landlord, dated March 17, 2015, in which the landlord conveys that he does not wish to pursue monetary reimbursement by way of a monetary Order;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 3, 2015, which the landlord states was served to the tenant on March 3, 2015, for \$1,300.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 13, 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 10:00 am on March 3, 2015. The Proof of Service establishes that the service was witnessed by "MT" and a signature for MT 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 March 6, 2015, three days after its posting.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be attached to the door of the rental unit only when considering the issuance of an Order of Possession for the landlord. As the landlord served the Notice of Direct Request Proceeding in accordance with section 89(2)(d) of the *Act*, I have leave to hear the landlord's application for an Order of Possession. Although the application indicates that the landlord seeks a monetary Order, in a note dated March 17, 2015, the landlord conveyed that he does not wish to seek a monetary Order and has withdrawn his application for a monetary Order. Therefore, under this application, I will consider only the landlord's application for an Order of Possession and it remains open for the landlord to re-apply for a monetary Order if the landlord so wishes.

I find that the tenant was obligated to pay monthly rent in the amount of \$650.00, 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 \$1,300.00, comprised of

the balance of rent owed for the months of February 2015 and March 2015. I find that the tenant received the Notice on March 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, March 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice served to the tenant for unpaid rent owing for February 2015 and March 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.

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 18, 2015

Residential Tenancy Branch

