



Dispute Resolution Services

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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 2015 at 3:25 pm, the landlord “GM” served the tenant “RN” 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 “JB” and a signature for JB is included on the form.

Based on the written submissions of the landlords, and in accordance with section 89 of the *Act*, I find that the tenant RN has been duly served with the Direct Request Proceeding documents on March 16, 2015.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2015, the landlord GM served the tenant “DW” with the Notice of Direct Request Proceeding via registered mail. The landlords 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. The Proof of Service form also establishes that the service was witnessed by “JB” and a signature for JB is included on the form.

Based on the written submissions of the landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant DW has been deemed served with the Direct Request Proceeding documents on March 22, 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 landlords and the tenants on November 7, 2014, indicating a monthly rent of \$1,800.00 due on the first day of the month for a tenancy commencing on November 15, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$350.00 for unpaid rent. The landlords indicate that the monthly rent owing for March 2015 was \$1,800.00, with a partial payment of \$1,450 received on March 5, 2015, resulting in a balance of rental arrears in the amount of \$350.00 in rent owing for March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 3, 2015, which the landlords state was served to the tenants on March 3, 2015 for \$1,800.00 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 landlords served the Notice to the tenants by way of personal service via hand-delivery at 5:15 pm on February 3, 2015. The Proof of Service establishes that the service was witnessed by "SG" and a signature for SG is included on the form.
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenants by way of registered mail on March 3, 2015. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 landlords 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 registered mail, the tenants are 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 tenants are deemed to have received the Notice on March 8, 2015, five days after its registered mailing.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,800.00, 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 \$350.00, comprised of the balance of rent owed for the month March 2015. I find that the tenants received the Notice on March 8, 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 corrected effective date of the Notice, March 18, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$350.00 for unpaid rent owing for March 2015, as of March 16, 2015.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). 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 landlords are entitled to a monetary Order in the amount of \$350.00 for unpaid rent owing for March 2015, as of March 16, 2015. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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

