



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 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 17, 2015, the female landlord served the tenant 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.

Based on the written submissions of the landlords, 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 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:

- 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 landlords and the tenant on July 7, 2014, indicating a monthly rent of \$910.00 due on the first day of the month for a tenancy commencing on July 1, 2014;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$910.00 for unpaid rent for the month of March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 7, 2015, which the landlords state was served to the tenant on March 7, 2015 for \$935.00 in unpaid rent due on March 1, 2015, with a stated effective vacancy date of March 17, 2015; and
- A copy of the Proof of Service of the Notice showing that the female landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 2:06 pm on March 7, 2015. The Proof of Service establishes that the service was witnessed by the male landlord and a signature for the male landlord 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 landlords alleged that the tenant 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 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 10, 2015, three days after its posting.

I find that there is a discrepancy between the amount established as unpaid rent on the monetary worksheet, in the amount of \$910.00, for the month of March 2015, and the amount listed on the Notice served to tenant, which was in the amount of \$935.00. The difference in the amount of \$25.00 is due to the landlord including a late fee of \$25.00 to the amount listed on the Notice. The landlords also accounts for the \$25.00 late fee on the monetary worksheet, although the late fee is not included as part of the monetary claim. 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, which the landlord has demonstrated to be \$910.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$910.00, as established in the tenancy agreement. I accept the evidence before me that the tenant have failed to pay outstanding rental arrears in the amount of \$910.00 in rent owing for

the month of March 2015. I find that the tenant received the Notice on March 10, 2015. I accept the landlords' 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 20, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$910.00 for unpaid rent owing for March 2015, as of March 17, 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 \$910.00 for unpaid rent owing for March 2015, as of March 17, 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

