



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 two signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 12, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness sign a Proof of Service of the Notice of Direct Request Proceeding for Tenant T.C. to confirm personal service and had Tenant G.B. sign a Proof of Service of the Notice of Direct Request proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89, I find that the tenants have been duly served with the Direct Request Proceeding documents on March 12, 2015, the day it was personally served to them.

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:

- Two copies of the Proof of Service of the Notices of Direct Request Proceeding served to the tenants;

- A Schedule of Parties which shows that Tenant G.B. resides at an address which different than the address of the disputed rental unit.
- A copy of a residential tenancy agreement which was signed by the landlord and Tenant T.C. on February 21, 2014 and Tenant G.B. on February 25, 2014, indicating a monthly rent of \$1,150.00, due on the first day of the month for a tenancy commencing on February 19, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 16, 2015, and posted to the door of the rental unit on February 16, 2015, with a stated effective vacancy date of February 26, 2015, for \$1,150.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the door of the rental unit at 3:30 p.m. on February 16, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice as per Sections 71(2)(a) and 88 of the *Act*.

Director's orders: delivery and service of documents

- 71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

The service requirements for direct request materials are narrow to reflect the fact that the tenant does not have an opportunity to present evidence on the issues, unless they previously filed their own application for dispute resolution, seeking cancellation of the Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

registered mail;

in person, with a witness verifying it was served; or

by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

registered mail receipt and printed tracking report;

a receipt signed by the tenant, stating they took hand delivery of the document(s); or

a witness statement that they saw the landlord deliver the document(s).

The landlord has submitted two copies of the first page of the Proof of Service Notice to End Tenancy (POS), one for each tenant, but has only submitted one copy of the second page of the POS which confirms service for Tenant T.C.

The Schedule of Parties submitted and first page of the POS submitted by the landlord for Tenant G.B. clearly shows that Tenant G.B. does not reside at the rental unit anymore. Although the landlord states that they gave the 10 Day Notice to the wife of Tenant G.B., they have not proven service by way of either a witness signature or the wife's signature on the second page of the POS to confirm this service.

I find that I am not able to confirm service of the 10 Day Notice to Tenant G.B., which is a requirement of the Direct Request process.

The landlord's application naming Tenant G.B. as a respondent is dismissed with leave to reapply.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant T.C. was deemed served with the 10 Day Notice on February 19, 2015, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,150.00 as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, February 29, 2015.

In a Direct Request proceeding, a landlord cannot pursue rent owed for a period or an amount beyond the date or amount 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 November 2014, December 2014 and March 2015. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from November 2014, December 2014 and 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.

Therefore, I find that the landlord is entitled to an Order of Possession for this tenancy and a monetary Order against Tenant T.C. in the amount of \$1,150.00, the amount of the monthly rent as per the tenancy agreement which is on the 10 Day Notice, for unpaid rent owing for February 2015 as of March 10, 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 \$1,150.00 for rent owed for February 2015. The landlord is provided with this Order in the above terms and the Tenant T.C. must be served with **this Order** as soon as possible. Should the Tenant T.C. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application for a monetary Order in regards to unpaid rent for November 2014, December 2014 and March 2015 with leave to reapply.

I dismiss the landlord's application naming Tenant G.B. as a respondent with leave to reapply.

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 17, 2015

Residential Tenancy Branch

