



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 on March 18, 2015, the landlord served the tenant “JB” with the Notice of Direct Request Proceeding via registered mail. The landlord 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 landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant JB has been deemed served with the Direct Request Proceeding documents on March 23, 2015, the fifth day after their registered mailing.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding for “tenant SN” and has not established that tenant SN has been served the Notice of Direct Request Proceeding. Therefore, I dismiss the landlord’s application against the tenant SN with leave to reapply. I will hear the landlord’s application against tenant JB.

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 JB on December 20, 2014, indicating a monthly rent of \$1,200.00 due on the last day of the month preceding the month for which rent is due, for a tenancy commencing on December 22, 2014;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owing in the amount of \$124.00 for March 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 6, 2015, which the landlord states was served to the tenant on March 9, 2015, for \$124.00 in unpaid rent due on February 28, 2015, with a stated effective vacancy date of March 19, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of posting it to the door of the rental unit at 8:30 am on March 9, 2015. The Proof of Service form establishes that the service was witnessed by "KD" and a signature for KD is included on the form.

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 landlord alleged that the tenants 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 tenants are 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 tenants are deemed to have received the Notice on March 12, 2015, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,200.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay \$124.00 in rent which was due on February 28, 2015 for the month of March 2015. I find that the tenants received the Notice on March 12, 2015. I accept the landlord's 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 22, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession based on the Notice served to the tenants for unpaid rent owing for 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 31, 2015

Residential Tenancy Branch

