



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

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 forms which declare that on March 13, 2015, the landlord’s agent “JG” served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on March 18, 2015, the fifth day after their registered mailing.

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 Notice of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord’s agent on November 6, 2012 and signed by the tenants on October 29, 2012, indicating a monthly rent of \$1,150.00 due on the first day of the month for a tenancy commencing on November 1, 2012;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$2,225.00 for outstanding rent owing for February 2015 and March 2015. The landlord indicates that monthly rent owed for February 2015 was \$1,175.00 and a partial payment of \$125.00 was received on February 1, 2015, resulting in a balance of rent owing in the amount of \$1,050.00 for February 2015. There is unpaid rent owed in the amount of \$1,175.00 for March 2015;
- The landlord established the manner in which rent was raised from the initial \$1,150.00 stated in the tenancy agreement to the current amount of \$1,175.00 by providing a copy of a "Notice of Rent Increase" form, dated March 26, 2014, provided to the tenants during the course of the tenancy
- A copy of a rent receipt dated February 1, 2015 which confirms receipt of a partial payment of \$175.00 received from the tenants;
- A copy of a letter dated June 12, 2013 which demonstrates that the landlord changed its name from the name indicated on the tenancy agreement to the current name as depicted on the application for dispute resolution;
- 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 tenants on March 3, 2015, for \$2,225.00 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's agent JG served the Notice to the tenants by way of posting it to the door of the rental unit on March 3, 2015. The Proof of Service form establishes that the service was witnessed by "LS" and a signature for LS 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 6, 2015, three days after its posting.

On the monetary worksheet, the landlord indicates that the tenants provided a partial payment of \$125.00 on February 1, 2015. However, the landlord provided a copy of a rent receipt which demonstrates that the tenants provided a partial payment of \$175.00 on February 1, 2015. In determining the actual amount paid by the tenants on February 1, 2015, I will rely on the evidence provided by the landlord, in the form of the rent receipt, and

find that the tenants provided a partial payment of \$175.00 on February 1, 2015, resulting in an outstanding amount of unpaid rent in the amount of \$1,000.00 for February 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,175.00, as the landlord has established that the monthly rent amount was raised in an appropriate manner from the initial amount of \$1,150.00, as established in the tenancy agreement, to the current amount of \$1,175.00. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$2,175.00, comprised of the balance of rent owed for the months of February 2015 and March 2015.

I find that the tenants received the Notice on March 6, 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 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,175.00 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,175.00 for unpaid rent owing for February 2015 and March 2015. The landlord is 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: April 15, 2015

Residential Tenancy Branch

