



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 forms which declare that on April 15, 2015, the landlord's agent 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 April 20, 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 and the tenants on May 12, 2014, indicating a monthly rent of \$1,500.00 for a tenancy commencing on June 1, 2014;

- A copy of a pre-authorized debit agreement agreed to by the landlord and the tenant "TO" which demonstrates that the parties agreed that the landlord would be authorized to debit the bank account of the tenant "TO" in the amount of \$1,500.00 per month on the first day of every month for the period of July 1 to May 1;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,500.00 for outstanding rent owing for April 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 2, 2015, which the landlord states was served to the tenants on April 2, 2015, for \$1,500.00 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of April 15, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RC" served the Notice to the tenants by way of registered mail on April 2, 2015. The landlord's agent 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 landlord 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 April 7, 2015, five days after its registered mailing.

The manner in which the copy of the tenancy agreement provided by the landlord is drafted demonstrates that it does not specify the day in the month on which the rent is due. However, the landlord has provided a copy of a document, which was signed on the same date as the tenancy agreement, which details the agreement between the landlord and the tenants with respect to a pre-authorized debit. The pre-authorized debit agreement agreed to by the landlord and the tenants demonstrates that the parties agreed that the landlord would be authorized to debit the bank account of the tenant "TO" in the amount of \$1,500.00 per month on the first day of every month for the period of July 1 to May 1. The details agreed to in the pre-authorized debit agreement, such as the amount to be debited of \$1,500.00 and the period of time of July 1 to May 1, coincide with the terms of the tenancy agreement, as the tenancy agreement established the monthly rent to be \$1,500.00 and the period of the fixed-term tenancy agreement to run from June 1, 2014 to May 31, 2015. Therefore, it is tenable then to infer that since the pre-authorized debit agreement establishes that the landlord is authorized to debit the tenant's account on the first day of each month, and since the pre-authorized debit agreement was signed on the same date as the tenancy agreement, that the pre-authorized debit

agreement was intended to be included as a term of the tenancy agreement and that the parties have agreed that the monthly rent is due on the first day of each month.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,500.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$1,500.00 in rent for the month of April 2015. I find that the tenants received the Notice on April 7, 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, April 17, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,500.00 for unpaid rent owing for April 2015, as of April 15, 2015.

Conclusion

I grant an Order of Possession to the landlord 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 landlord is entitled to a monetary Order in the amount of \$1,500.00 for unpaid rent owing for April 2015, as of April 15, 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 29, 2015

Residential Tenancy Branch

