



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 27, 2015, the landlord served the tenant 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 has been deemed served with the Direct Request Proceeding documents on May 2, 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A note from the applicant landlord (the landlord) which demonstrates that the tenancy agreement included the name and signature of his father, the original landlord. The applicant landlord indicates that he is now the executor of the estate of his late father. The landlord included a copy of a certificate of death bearing the name of the original landlord;
- A copy of a residential tenancy agreement which was signed by the original landlord and the tenant on October 13, 2010, indicating a monthly rent of \$1,600.00 due on the first day of the month for a tenancy commencing on November 1, 2010. The tenancy agreement demonstrates that another tenant, identified as "CD", was also a signatory to the tenancy agreement. However, CD is not named as a respondent in this application as the landlord has provided a submission to demonstrate that CD vacated the rental unit.
- 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 \$1,600.00 for outstanding rent owing for April 2015;
- A copy of a returned cheque, dated April 1, 2015, in the amount of \$1,600.00, provided by the tenant to the original landlord. The landlord provides a document titled "Returned Item Advice" to demonstrate that the cheque was returned due to insufficient funds;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 14, 2015, which the landlord states was served to the tenant on April 14, 2015, for \$1,600.00 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of April 31, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit at 5:37 pm on April 14, 2015. The Proof of Service form establishes that the service was witnessed by "DA" and a signature for DA 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 landlord alleged that the tenant 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 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 April 17, 2015, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,600.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$1,600.00 in rent for the month of April 2015. I find that the tenant received the Notice on April 17, 2015. I accept the landlord's 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, April 30, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,600.00 for unpaid rent owing for April 2015, as of April 24, 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 \$1,600.00 for unpaid rent owing for April 2015, as of April 24, 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: May 05, 2015

Residential Tenancy Branch

