



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPEROUS DEVELOPMENT INC.
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 May 5, 2015, at 7:50 pm, the landlord’s agent “SH” served the tenants “GB” and “KB” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenants “GB” and “KB” acknowledged receipt of the Notice of Direct Request Proceeding by providing their respective signatures on the Proof of Service forms. The personal service was also confirmed as the Proof of Service forms establish that the service was witnessed by “HK” and a signature for HK is included on each of the forms.

The landlord provided a third signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on May 5, 2015, at 7:50 pm, the landlord’s agent “SH” served the tenant “AB” with the Notice of Direct Request Proceeding by way of serving the documents by hand to the tenant “KB”, who is identified as being a co-tenant of the tenant “AB”. The tenant “KB” acknowledged receipt of the Notice of Direct Request Proceeding on behalf of “AB” by providing her signature on the Proof of Service form. The service was also confirmed as the Proof of Service form establishes that the service was witnessed by “HK” and a signature for HK is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on May 5, 2015.

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:

- Three 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 September 2, 2013, indicating a monthly rent of \$2,300.00 due on the fourth day of the month for a tenancy commencing on September 3, 2013;
- 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 \$2,546.52, comprised of the balance of outstanding rent owing for the months of January, 2015, February 2015, March 2015, and April 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 20, 2015, which the landlord states was served to the tenants on April 20, 2015, for \$2,546.52 in unpaid rent due on April 4, 2015, with a stated effective vacancy date of April 25, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "SH" served the Notice to the tenants by way of personal service via hand-delivery at 2:15 pm on April 20, 2015. The Proof of Service form establishes that the service was witnessed by "HM" and a signature for "HM" 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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on April 20, 2015.

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 they served the tenant with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*. Section 89 reads, in part, as follows:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;
 - (b) by sending a copy by registered mail to the address at which the tenant resides;
 - (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
 - (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

Subsection 89(2)(c) of the *Act* does allow for the Notice of Direct Request Proceeding to be left at the tenant's residence with an adult who apparently resides with the tenant only when considering the issuance of an Order of Possession for the landlord. As the landlord served a copy of the Notice of Direct Request Proceeding to the tenant "AB" by leaving it with the co-tenant "KB", I find that "AB" has been served in accordance with section 89(2)(d) of the *Act*. However, with respect to the application as it pertains to the tenant "AB", I have leave to hear only that part of the landlord's application that asks for

an Order of Possession. I do not have leave to hear the landlord's application for a monetary Order against the tenant "AB". Therefore, I dismiss the landlord's application for a monetary Order against the tenant "AB" with leave to reapply. I will consider the landlord's application for a monetary Order against the tenants "GB" and "KB".

I find that the tenants were obligated to pay monthly rent in the amount of \$2,300.00, 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 \$2,546.52, comprised of the balance of unpaid rent owed for the months of January, 2015, February 2015, March 2015, and April 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 30, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,546.52 for the balance of unpaid rent owing for the months of January, 2015, February 2015, March 2015, and April 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 \$2,546.52 for the balance of unpaid rent owing for the months of January, 2015, February 2015, March 2015, and April 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: May 13, 2015

Residential Tenancy Branch

