



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COUNTESS GARDENS INC. DBA CEDAR GREEN APARTMENTS
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 12, 2015, the landlord's agent "JB" served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was also confirmed as the Proof of Service forms establish that the service was witnessed by "KB" and a signature for KB is included on each of the forms.

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 12, 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:

- 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 November 30, 2012, indicating a monthly rent of

\$690.00 due on the first day of the month for a tenancy commencing on December 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 \$710.00 for outstanding rent owed by May 2015. The landlord indicates that rental arrears in the amount of \$1,415.00 were due by May 2015 and a partial payment of \$705.00 was received on May 3, 2015;
- The landlord established the manner in which the monthly rent was raised from the initial \$690.00 stated in the tenancy agreement to the current amount of \$705.00 by providing a copy of a "Notice of Rent Increase" form, dated February 11, 2014, provided to the tenant during the course of the tenancy;
- A copy of a rental ledger which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a receipt which demonstrates that a partial payment of \$705.00 was provided by the tenant on May 3, 2015, and was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 2, 2015, which the landlord states was served to the tenants on May 2, 2015, for \$1,415.00 in unpaid rental arrears due on May 1, 2015, with a stated effective vacancy date of May 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JB" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "RB" at 11:30 am on May 2, 2015. The Proof of Service form establishes that the service was witnessed by "KB" and a signature for KB 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 May 2, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$705.00, as the landlord has established that the monthly rent amount was raised in an appropriate manner from the initial amount of \$690.00, as established in the tenancy agreement, to

the current amount of \$705.00. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$710.00, comprised of the balance of overdue rent owed as of May 11, 2015. I find that the tenants received the Notice on May 2, 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 effective date of the Notice, May 12, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$710.00 for unpaid rent owing as of May 11, 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 \$710.00 for unpaid rent owing as of May 11, 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

