



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 Proceedings which declares that on June 09, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding. The landlord had a witness and the tenants sign the Proofs of Service of the Notice of Direct Request Proceeding to confirm personal service for each tenant. Based on the written submissions of the landlord and in accordance with section 89, I find that the tenants have been duly served with the Direct Request Proceeding documents on June 09, 2015, the day it was personally served to them.

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 Notices of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord and the Tenant S.K. on January 10, 2014, indicating a monthly rent of \$1,200.00, due on the first day of the month for a tenancy commencing on February 01, 2014;
- A copy of an addendum to the residential tenancy agreement, signed by the landlord and the tenants on February 02, 2015, which adds Tenant R.W. to the tenancy agreement;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$900.00 of the \$2,100.00 identified as owing in the 10 Day Notice was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 02, 2015, and personally handed to the tenants on June 02, 2015, with a stated effective vacancy date of June 13, 2015, for \$2,100.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenants at 5:51 p.m. on June 02, 2015. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on June 02, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,200.00 as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day 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 10 Day Notice, June 13, 2015.

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these

types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

I find that the amount of rent claimed on the Monetary Order Worksheet does not match with the amount of rent as indicated on the 10 Day Notice and that I cannot correctly determine the total amount of rent owing.

It is for this reason that the monetary portion of the landlord's application is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession, for unpaid rent owing for May 2015 and June 2015 as of June 09, 2015.

Conclusion

I grant an Order of Possession to the landlord effective on **June 13, 2015, 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.

I dismiss the landlord's request for a monetary Order, with leave to reapply.

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: June 10, 2015

Residential Tenancy Branch

