



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 17, 2015, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings.

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 tenants on May 01, 2015, indicating a monthly rent of \$775.00, due on the first day of the month for a tenancy commencing on May 01, 2015;

- A copy of a letter from the landlord to the tenant, dated June 02, 2015, regarding an assignment of tenancy which indicates that Tenant C.Z. has vacated the rental unit as of June 01, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 05, 2015, and posted to the door of the rental unit on June 05, 2015, with a stated effective vacancy date of June 16, 2015, for \$800.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the door of the rental unit at 3:13 p.m. on June 05, 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

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request Proceedings with all the required inclusions as indicated on the Notice as per section 89 of the *Act*. Section 89 of the *Act* states that the Notice of Direct Request Proceeding, when served by registered mail, must be sent to the address at which the tenant resides. According to the letter submitted by the landlord as evidence regarding the assignment of tenancy, Tenant C.Z. did not reside at the rental unit as of June 01, 2015. For the above reasons, I find that Tenant C.Z. has not been served with the Notice of Direct Request Proceeding.

The landlord's application naming Tenant C.Z. as a respondent is dismissed, with leave to reapply.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that only Tenant M.D. has been deemed served with the Direct Request Proceeding documents on June 22, 2015, the fifth day after their registered mailing.

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that Tenant M.D. was deemed served with the 10 Day Notice on June 08, 2015, three days after its posting.

I find that Tenant M.D. was obligated to pay the monthly rent in the amount of \$775.00 as per the tenancy agreement.

I accept the evidence before me that Tenant M.D. has 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 Tenant M.D. is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 18, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession for this tenancy and a monetary Order in the amount of \$775.00, the amount claimed by the landlord, for unpaid rent owing for June 2015 as of June 16, 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 \$775.00 for rent owed for June 2015. The landlord is provided with this Order in the above terms and Tenant M.D. must be served with **this Order** as soon as possible. Should Tenant M.D. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the landlord's application naming Tenant C.Z. as a respondent, 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 23, 2015

Residential Tenancy Branch

