



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that the landlord "NJ" served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. The information provided by the Canada Post website with respect to the Tracking Numbers demonstrates that the items were accepted at the post office on June 10, 2015. 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 landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the Direct Request Proceeding documents on June 15, 2015, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 "NJ" and the tenants, indicating a monthly rent of \$1,250.00 due on the first day of the month for a tenancy commencing on May 15, 2015;

- A Monetary Order Worksheet on which the landlords establish a monetary claim in the amount of \$1,302.14, comprised of outstanding rent in the amount of \$1,250.00 for June 2015 and unpaid utilities in the amount of \$52.14;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 2, 2015, which the landlords state was served to the tenants on June 2, 2015 for \$1,250.00 in unpaid rent due on June 1, 2015, and \$52.14 in unpaid utilities due on June 1, 2015 with a stated effective vacancy date of June 12, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord “NJ” served the Notice to the tenant “JT” by way of personal service via hand-delivery at 8:10 PM on June 2, 2015. The personal service was confirmed as the tenant acknowledged receipt of the Notice by signing the Proof of Service 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 landlords 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 June 2, 2015.

As part of the application for a monetary Order, the landlords indicate on the monetary order worksheet that they seek \$52.14 for unpaid utilities. Section 46(6) of the *Act* provides the following with respect to non-payment of utilities under a tenancy agreement:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Although the tenancy agreement does include an addendum which stipulates that the tenants are required to pay a portion of the utilities with respect to the rental unit, the landlords have not provided any documentary evidence to establish that the provisions of section 46(6) of the *Act* were adhered to. The landlords have not provided a copy of a written demand served to the tenants to direct them to pay the outstanding amount owed for the portion of the utilities they are expected to pay under the agreement. I find that as the landlords have not followed the requirements under section 46(6) of the *Act*, it is not open for the landlords to treat the unpaid utilities as unpaid rent and seek reimbursement by way of a monetary Order via the Direct Request process. I dismiss that portion of the landlords' application for a monetary Order that deals with unpaid utilities with leave to reapply. I limit my consideration of the landlords' request for a monetary Order to the unpaid rent claimed as owing to the landlords.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,250.00, 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 \$1,250.00 in rent for the month of June 2015. I find that the tenants received the Notice on June 2, 2015. I accept the landlords' 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, June 12, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$1,250.00 for unpaid rent owing for June 2015, as of June 9, 2015.

Conclusion

I grant an Order of Possession to the landlords 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 landlords are entitled to a monetary Order in the amount of \$1,250.00 for unpaid rent owing for June 2015, as of June 9, 2015. The landlords are 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: June 16, 2015

Residential Tenancy Branch