



Dispute Resolution Services

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 29, 2015, at 1:55 pm, the landlord served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by "IP" and a signature for IP 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 tenant has been duly served with the Direct Request Proceeding documents on May 29, 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on November 7, 2014, indicating a monthly rent of \$495.00 due on the first day of the month for a tenancy commencing on December 1, 2014;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$990.00, comprised of unpaid rent owed in the amount of \$495.00 for each of April 2015 and May 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 20, 2015, which the landlord states was served to the tenant on May 20, 2015, for \$990.00 in unpaid rent due on April 1, 2015, with a stated effective vacancy date of June 2, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of posting it to the door of the rental unit on May 20, 2015. The Proof of Service form establishes that the service was witnessed by "YL" and a signature for YL is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord(s). Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on May 23, 2015, three days after its posting.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's monetary order worksheet and the amount indicated on the Notice issued to the tenant for rent due by April 1, 2015. The sum of the rent owed, as indicated on the monetary worksheet, results in a balance of rent outstanding, as of May 29, 2015, in the amount of \$990.00. The balance of rent owed in the amount of \$990.00 relies on the inclusion of rent owed in the amount of \$495.00 for each of April 2015 and May 2015.

However, the Notice issued to the tenant on May 20, 2015 alerts the tenant to the amount of rent due by April 1, 2015, which should therefore be comprised only of unpaid rent owed by April 1, 2015. The monetary worksheet provided by the landlord indicates that unpaid rent for April 2015 was \$495.00. However, the Notice issued to the tenant indicates that an amount of \$990.00 in unpaid rent was due by April 1, 2015. It may be inferred that the landlord included unpaid rent owed for the months of April 2015 and May 2015 as being due by April 1, 2015 on the Notice issued to the tenant.

In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice indicates that rent was due by, in this case, April 1, 2015. Therefore, within the purview of the Direct Request process, I cannot hear the portion of

the landlord's application for a monetary claim arising from rent owed for May 2015. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from May 2015, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the Notice issued to the tenant for unpaid rent owed by April 1, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$495.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$495.00 in rent for the month of April 2015. I find that the tenant received the Notice on May 23, 2015. I accept the landlord's undisputed evidence and find that the tenant 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, June 2, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$495.00 for unpaid rent owing for April 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 \$495.00 for unpaid rent owing for April 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 03, 2015

Residential Tenancy Branch