



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 16, 2015, the landlord’s agent “DS” served the tenant “MP” with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant “MP” has been deemed served with the Direct Request Proceeding documents on July 21, 2015, the fifth day after their registered mailing.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord’s agent “DS” served the tenant “JK” with the Notice of Direct Request Proceeding via registered mail. However, the landlord has not provided any documentary evidence, such as a Canada Post Customer Receipt containing the Tracking Number, to confirm the mailing and to demonstrate that the tenant “JK” was served with the Direct Request Proceeding documents by way registered mail. Therefore, I find that I cannot confirm that the tenant “JK” has been served with the Direct Request Proceeding documents in accordance with the *Act*. Accordingly, I dismiss the landlord’s application against the tenant “JK” with leave to reapply. I will hear the landlord’s application against the tenant “MP” only.

The landlord’s agent provided a Canada Post Customer Receipt containing a Tracking Number associated with a second registered mail item which demonstrates that it was addressed to an individual, identified as “YK”. However, “YK” is not named as a respondent on this application for dispute resolution.

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 and the tenants on October 16, 2010, indicating a monthly rent of \$850.00 due on the first day of the month for a tenancy commencing on October 15, 2010;
- The landlord established the manner in which rent was raised from the initial \$850.00 stated in the tenancy agreement to the current amount of \$899.00 by providing copies of "Notice of Rent Increase" forms provided to the tenant during the course of the tenancy;
- 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 \$899.00 for outstanding rent owing for July 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated July 14, 2015, which the landlord states was served to the tenants on July 3, 2015, for \$899.00 in unpaid rent due on July 2, 2015, with a stated effective vacancy date of July 14, 2015. The landlord provided a note to indicate that the Notice was dated July 14, 2015 in error, but was actually served on July 3, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "MM" served the Notice to the tenants by way of posting it to the door of the rental unit on July 3, 2015. The Proof of Service form establishes that the service was witnessed by "RG" and a signature for RG 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 provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are 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 tenants are deemed to have received the Notice on July 6, 2015, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$899.00, as the landlord has established that the monthly rent amount was raised from the initial amount of

\$850.00, as established in the tenancy agreement, to the current amount of \$899.00. I accept the evidence before me that the tenants have failed to pay \$899.00 in rent for the month of July 2015. I find that the tenants received the Notice on July 6, 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 corrected effective date of the Notice, July 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$899.00 for unpaid rent owing for July 2015, as of July 15, 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 \$899.00 for unpaid rent owing for July 2015, as of July 15, 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: July 22, 2015

Residential Tenancy Branch

