



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA HOMES (2005) LTD
and [tenant name suppressed to protect privacy]

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 23, 2015, the landlord personally served Tenant B.H. the Notice of Direct Request Proceeding. The landlord provided signed and witnessed documentary evidence to confirm this service. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant B.H. has been duly served with the Direct Request Proceeding documents on July 23, 2015.

The landlord did not submit a Proof of Service of the Notice of Direct Request Proceeding to demonstrate service upon Tenant J.N.

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 Tenant B.H.;
- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on May 1, 2014, indicating a monthly rent of \$1,400.00, due on the first day of the month for a tenancy commencing on May 1, 2014;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 7, 2015, and personally served to the tenants on July 7, 2015, with a stated effective vacancy date of July 17, 2015, for \$3,366.28 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 2:00 pm on July 7, 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 sections 88 and 90 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on July 7, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00, as per the tenancy agreement.

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I find that the Monetary Order Worksheet submitted by the landlord contains discrepancies which make it impossible to determine the exact amount owing in an *ex parte* Direct Request Proceeding. For this reason, I dismiss the landlord's application for a Monetary Order with leave to reapply.

However, I accept the evidence before me that the amounts owing exceed the payments made. 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, July 17, 2015.

In the absence of a Proof of Service of the Notice of Direct Request Proceedings for tenant J.N., I find I am unable to confirm service upon this tenant.

Therefore, I find that the landlord is entitled to an Order of Possession against tenant B.H. and any other occupant on the premises for unpaid rent owing as of July 21, 2015.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant B.H. Should Tenant B.H. and any other occupant or person on the premises 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 application 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: July 27, 2015

Residential Tenancy Branch

