



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 Proceeding forms which declare that on August 21, 2015, the landlord's agent “CC” served the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on August 26, 2015, the fifth day after their registered mailing.

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 “ZL” and the tenants on July 26, 2010, indicating a monthly rent of \$2,000.00 due on the first day of the month for a tenancy commencing on August 1, 2010;

- 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 \$2,100.00 for outstanding rent owing for August 2015;
- A copy of returned cheque, dated, September 2012, from the tenant “GB”, on which the sum of \$2,100.00 is depicted as being paid to the landlord “ZL”;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 6, 2015, which the landlord states was served to the tenants on August 6, 2015, for \$2,100.00 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 16, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent “CC” served the Notice to the tenants by way of posting it to the door of the rental unit on August 6, 2015. The Proof of Service establishes that the service was witnessed by “IC” and a signature for “IC” 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 August 9, 2015, three days after its posting.

Although a second individual, identified as “CC”, is named as a landlord on the application form, “CC” is not listed as a landlord on the tenancy agreement to demonstrate that the tenants entered into a tenancy agreement with “CC”, nor does a signature for “CC” appear on the tenancy agreement. Therefore, I will consider the application with the applicant “ZL” being considered the sole landlord.

The landlord has included a hand-written note on the tenancy agreement to indicate that the rent was raised to \$2,100.00 in September 2012 pursuant to an agreement by the parties. However, the landlord has not provided any documentary evidence to support the statement. Therefore, in determining the monthly rent amount agreed upon by the parties, I will rely upon the information provided in the tenancy agreement, which lists the monthly rent as being \$2,000.00. The landlord has included a copy of returned cheque, dated, September 2012, from the tenant “GB”, on which the sum of \$2,100.00 is depicted as being paid to the landlord “ZL”. However, the returned cheque does not sufficiently demonstrate that the parties entered into an agreement to raise the monthly rent under the tenancy to \$2,100.00 as the landlord contends.

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 does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. Within the limited scope of the Direct Request process, I cannot

ascertain whether the returned cheque, in the amount of \$2,100.00, represents a one-time payment in that amount, or whether there were subsequent payments provided by the tenants in the same amount. The uncertainty which arises from this issue cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which clarifies the questions raised by the lack of evidence provided by the landlord with respect to the issue of the rent increase presented by the landlord.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,000.00, 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 \$2,000.00 in rent for the month of August 2015. I find that the tenants received the Notice on August 9, 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, August 19, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,000.00 for unpaid rent owing for August 2015, as of August 20, 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 \$2,000.00 for unpaid rent owing for August 2015, as of August 20, 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: August 28, 2015

Residential Tenancy Branch

