



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on August 19, 2015, the landlord served the above-named tenants with the Notice of Direct Request Proceeding via registered mail.

The landlord has provided only one copy of a Canada Post Customer Receipt containing a tracking number which depicts that the names of both tenants are listed as recipients on a single registered mail item associated with the Canada Post Customer Receipt. If a landlord chooses to serve two tenants by way of registered mail, the landlord must serve each tenant individually, by sending the Direct Request Proceeding documents in separate registered mail envelopes, under separate registered mail items, such that there are two separate registered mail Canada Post Customer Receipts containing two distinct Tracking Numbers to demonstrate the separate mailings.

In the matter before me, the landlord has provided evidence of only one Canada Post registered mailing with one Tracking Number, and a receipt to demonstrate that both tenants were listed as recipients. The Canada Post website provides details associated with the registered mail tracking number provided by the landlord. The information associated with the tracking number demonstrates that the registered mail item was received and signed-for by the tenant “TJ” on August 20, 2015. An electronic signature for “TJ” is included as part of the tracking history to confirm that “TJ” received the registered mail item on August 20, 2015.

Therefore, I find that the tenant “TJ” has been served with the Direct Request Proceeding documents on August 20, 2015.

As the landlord has not provided evidence of a separate registered mail item received by the tenant “MR”, I find that the landlord has not established that tenant “MR” has been served the Notice of Direct Request Proceeding documents. Therefore, I find that

I cannot confirm that the tenant “MR” has been served with the Direct Request Proceeding documents in accordance with the *Act*. Therefore, I dismiss the landlord’s application against the tenant “MR” with leave to reapply. I will hear the landlord’s application against tenant “TJ” only.

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 April 30, 2015, indicating a monthly rent of \$1,450.00 due on the first day of the month for a tenancy commencing on May 1, 2015;
- 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 \$2,840.00 for outstanding rent, comprised of the balance of unpaid rent owing for the months of June 2015 and July 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 10, 2015, which the landlord states was served to the tenants on August 10, 2015, for \$2,840.00 in unpaid rent due on July 1, 2015, with a stated effective vacancy date of August 20, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent “CM” served the Notice to the tenants by way of personal service via hand-delivery on August 10, 2015. The Proof of Service form establishes that the service was witnessed by “SD” and a signature for “SD” 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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on August 10, 2015.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,450.00, 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 \$2,840.00, comprised of the balance of unpaid rent owing for the months of June 2015 and July 2015. I find that the tenants received the Notice on August 10, 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 effective date of the Notice, August 20, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,840.00 for unpaid rent owing for the months of June 2015 and July 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 \$2,840.00 for unpaid rent owing for the months of June 2015 and July 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