



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 17, 2015, the landlord’s agent “JZ” 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 22, 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's agent and the tenants on May 3, 2013, indicating a monthly rent of \$840.00 due on the first day of the month for a tenancy commencing on May 1, 2013;
- The landlord established the manner in which rent was raised from the initial \$840.00 stated in the tenancy agreement to the current amount of \$879.94 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 and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$654.94, comprised of the balance of rent owing for August 2015, and the balance of the amount owed for the monthly parking fee for August 2015;
- A copy of a receipt which demonstrates that a partial rental payment of \$320.00 was provided by the tenants on August 7, 2015, and was acknowledged by the landlords as being received for use and occupancy only;
- A copy of a rental ledger titled "Statement of Account by Transaction Date" which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a document titled "Parking Addendum to Tenancy Agreement" which demonstrates that the tenants are to pay an additional amount of \$45.00 for parking.
- 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 \$924.94 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 19, 2015. The Notice contains an additional amount of \$45.00 as the landlord added to the Notice the \$45.00 monthly fee owed for parking. Additional fees, such as parking fees, cannot be sought by way of the Direct Request process;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "JZ" served the Notice to the tenants by way of posting it to the door of the rental unit at 1:35 PM on August 6, 2015. The Proof of Service establishes that the service was witnessed by "LC" and a signature for "LC" 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.

I find that the tenants were obligated to pay monthly rent in the amount of \$879.94, as the landlord has established that the monthly rent amount was raised from the initial amount of \$840.00, as established in the tenancy agreement, to the current amount of \$879.94.

As part of the monetary claim established on the monetary order worksheet, and on the amount listed on the Notice issued to the tenant, the landlord has included a fee for which reimbursement cannot be sought by way of the Direct Request process. The monthly rent owed is \$879.94, with a separate fee of \$45.00 identified as a parking fee. As reimbursement for additional fees, such as parking fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent.

I find that the tenants were obligated to pay monthly rent in the amount of \$879.94. The evidentiary material provided by the landlord establishes that a partial payment of \$320.00 was provided by the tenants, resulting in a balance of unpaid rent for the month of August 2015 in the amount of \$559.94.

I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$559.94 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 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 \$559.94 for unpaid rent owing for August 2015, as of August 17, 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 \$559.94 for unpaid rent owing for August 2015, as of August 17, 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 24, 2015

Residential Tenancy Branch

