



Dispute Resolution Services

Page: 1

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 11, 2015, the landlord 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 16, 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 and the tenant "LC" on February 28, 2014, indicating a monthly rent of \$790.00 due on the first day of the month for a tenancy commencing on March 1, 2014. Although a second person, identified as "BC", is named as a respondent tenant on the application for dispute resolution, "BC" is not listed on the tenancy agreement as a tenant, rather, "BC" is listed as an occupant, and a signature for "BC" does not appear on the tenancy agreement to establish that "BC" endorsed the terms of the agreement as a tenant. Therefore, I will consider the landlord's application against the tenant "LC" only.
- 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 \$790.00 for outstanding rent owing for August 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 4, 2015, which the landlord states was served to the tenants on August 4, 2015, for \$790.00 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 13, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant "LC" on August 4, 2015 at 9:00 PM, by way of leaving the Notice with an adult who apparently lives with the tenant. The landlord indicates that the Notice was left with an individual identified as "KP" who the landlord indicates resides with the tenant. The Proof of Service form establishes that the service was witnessed by "AS" and a signature for "AS" 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 tenant "LC" was served with the Notice on August 4, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$790.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$790.00 in rent for the month of August 2015. I find that the tenant received the Notice on August 4, 2015. I accept the landlord's undisputed evidence and find that the tenant 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 tenant is 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 14, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$790.00 for unpaid rent owing for August 2015, as of August 11, 2015.

Although there are two respondents listed on the application form, only the tenant "LC" is a signatory to the tenancy agreement; therefore, I will issue the orders against the tenant "LC" only.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 \$790.00 for unpaid rent owing for August, as of August 11, 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 17, 2015

Residential Tenancy Branch

