



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXIMUM INCOME PROPERTY MANAGEMENT CORP
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 August 28, 2015, the landlord’s agent “DM” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service. The Proof of Service form also establishes that the service was witnessed by “KW” and a signature for “KW” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 2, 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant on April 15, 2015, indicating a monthly rent of \$1,650.00 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 \$1,650.00 for outstanding rent owing for August 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 12, 2015, which the landlord states was served to the tenant on August 12, 2015, for \$1,692.50 in unpaid rent due on August 1, 2015, with a stated effective vacancy date of August 22, 2015. The landlord provided a written statement, August 28, 2015, indicating that the Notice includes an additional amount of \$42.50, comprised of a bank NSF fee. Reimbursement for additional fees, such as NSF fees, cannot be sought by way of the Direct Request process. The landlord further indicates that the NSF fee is not being sought, and the landlord's monetary worksheet demonstrates that only the balance of unpaid rent for August 2015, in the amount of \$1,650.00, is being claimed via the monetary order request;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "DM" served the Notice to the tenant by way of registered mail on August 12, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 registered mail, the tenant is deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on August 17, 2015, five days after its registered mailing.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,650.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay \$1,650.00 in rent for the month of August 2015. I find that the tenant received the Notice on August 17, 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 27, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,650.00 for unpaid rent owing for August 2015, as of August 28, 2015.

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 \$1,650.00 for unpaid rent owing for August 2015, as of August 28, 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: September 03, 2015

Residential Tenancy Branch

