



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H & M REMPEL ENTERPRISE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Preliminary Issues

The Landlord's Application for Direct Request listed the corporate Landlord's Agent's name as applicant with the word "Agent" in brackets. The tenancy agreement listed a portion of the corporate Landlord's name excluding the word "Enterprises" and the proof of service document listed the Agent's name and signature with the Corporate Landlord's full name in brackets.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the above and in accordance with the tenancy agreement, the Landlord includes the corporate Landlord. Therefore, I have amended the style of cause on this Decision to include the Landlord's corporate name, in accordance with section 64 (3)(c) of the Act.

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution filed by the Landlord for an Order of Possession for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 18, 2015 at 12:45 p.m. the Landlord served each named Respondent with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that each named Tenant was deemed served with the Direct Request hearing documents on September 23, 2015, 5 days after they mailed, in accordance with section 89 of the Act.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an Order of Possession and a Monetary Order?
- 2) If so, are should those Orders be issued against both respondent Tenants?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each named Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant C.W. The other named Tenant T.A. did not sign the tenancy agreement. The tenancy agreement was for a month to month tenancy that began on July 10, 2015 for the monthly rent of \$725.00 due in advance on the 1st of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 03, 2015, with an effective vacancy date listed as September 15, 2015, due to \$725.00 in unpaid rent that was due on September 01, 2015.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent on September 03, 2015 at 7:00 p.m. when it was attached to the Tenants' door in the presence of a witness.

Analysis

The Direct Request procedure is based upon written submissions only and requires that the submissions be sufficiently clear, valid and supported by evidence in order to succeed. Evidence must be submitted to prove that a tenancy agreement exists between the applicant and the named respondent(s).

I have reviewed all documentary evidence and note that the Tenant T.A. did not sign the tenancy agreement; however, the Tenant C.W. did sign the agreement. Therefore, as this application has been filed under the Direct Request process I find it can only proceed against Tenant C.W. who was a signatory to the tenancy agreement. Accordingly, I dismiss the claim against the Tenant T.A., without leave to reapply.

I accept that the Tenant C.W. has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to be received by the Tenant on September 6, 2015 three days after it was posted, and the effective date of the notice is September 16, 2015, pursuant to sections 46 and 90 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 effective date of the Notice and I hereby grant the Landlord an Order of Possession.

The evidence supports that the Tenant failed to pay the rent that was due on September 1, 2015, in violation of section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order for **\$725.00**.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The claim against respondent Tenant T.A. is HEREBY DISMISSED, without leave to reapply. The Landlord was success with his application against Tenant C.W. and was granted an Order of Possession and a Monetary Order for unpaid rent of \$725.00.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been issued a Monetary Order in the amount of **\$725.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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 24, 2015

Residential Tenancy Branch

