



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 Proceedings which declares that on October 07, 2015, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 October 12, 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 Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and Tenant A.V. on June 12, 2015, indicating a monthly rent of \$2,600.00, which is crossed out, and a new monthly rent of \$2,900.00 written in with the initials of the landlord beside the change in monthly rent, due on the first day of the month for a tenancy commencing on June 12, 2015;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 14, 2015, and sent by registered mail to the tenants on September 14, 2015, with a stated effective vacancy date of September 27, 2015, for \$2,900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the 10 Day Notice was sent by registered mail to the tenants at 12:49 p.m. on September 14, 2015. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on September 19, 2015, five days after its mailing.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day 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 corrected effective date of the 10 Day Notice, September 29, 2015.

Direct request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability of the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

Section 14(2) of the *Act* establishes that “a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and the tenant agree to the amendment”. Section 14(3) of the *Act* states that the requirement for agreement under subsection (2) does not apply to a rent increase in accordance with Part 3 of this *Act*.

I find that the change in the monthly rent amount on the tenancy agreement raises a question as to what was agreed upon between the landlord and the tenants. If this change in the monthly rent was done at the time that the tenancy agreement was being negotiated between the landlord and the tenant, the change would have had to be initialed by both parties. If the landlord wanted to amend the monthly rent after the tenancy had started, they would have to use the Notice of Rent Increase form in accordance with Part 3 of the *Act*.

Due to the fact that the direct request is an ex parte process and I am not able to address these questions with the landlord and the tenants, the landlord's application for a monetary Order is dismissed, with leave to reapply.

I further find that Tenant L.R. has not signed the tenancy agreement.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for September 2015 as of October 07, 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.

I dismiss the landlord's application for a monetary Order, with leave to reapply.

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: October 13, 2015

Residential Tenancy Branch

