



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 17, 2015, the landlord personally served Tenant C.H. the Notice of Direct Request Proceeding. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlord and in accordance with section 89 (1) of the *Act*, I find that Tenant C.H. has been duly served with the Notice of Direct Request Proceeding documents on November 17, 2015.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 17, 2015, the landlord served Tenant R.W. the Notice of Direct Request Proceeding by personally handing it to Tenant C.H., an adult who resides with Tenant R.W. The landlord had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submission of the landlord and in accordance with section 89 (2) of the *Act*, I find that Tenant R.W. has been duly served with the Notice of Direct Request Proceeding documents on November 17, 2015, in consideration of the Order of Possession only.

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 tenants on August 12, 2015, indicating a monthly rent of \$1,250.00, due on the first day of the month for a tenancy commencing on June 27, 2014. A tenancy agreement is an instrument of the landlord, and, once endorsed by the tenant, the landlord's failure to sign their own agreement does not invalidate it;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$1,250.00 of the \$1,250.00 identified as owing on the 10 Day Notice was paid on November 13, 2015; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 05, 2015, and personally handed to the tenants on November 05, 2015, with a stated effective vacancy date of November 15, 2015, for \$1,250.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenants on November 05, 2015. 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 section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on November 05, 2015.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,250.00 as per the tenancy agreement.

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, November 30, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession as of November 16, 2015.

Conclusion

I grant an Order of Possession to the landlord effective on **November 30, 2015, 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.

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: November 18, 2015

Residential Tenancy Branch

