



Dispute Resolution Services

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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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 23, 2015, the landlord personally served the tenants the Notices of Direct Request Proceeding by handing the documents to Tenant D.F.. The landlord had tenant D.F. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the landlord and in accordance with section 89(1) of the *Act*, I find that Tenant D.F. has been duly served with the Direct Request Proceeding documents on November 23, 2015.

Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that Tenant R.G. has been duly served with the Direct Request Proceeding documents on November 23, 2015.

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 Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlord and Tenant D.F. on June 28, 2013, indicating a monthly rent of \$750.00, due on the first day of the month for a tenancy commencing on July 1, 2013;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated November 15, 2015, and personally served to the tenants on November 15, 2015, with a stated effective vacancy date of November 25, 2015, for \$799.50 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally served to the tenants at 3:15 (a.m. or p.m. not indicated) on November 15, 2015. The 10 Day Notice states that the tenant 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 15, 2015.

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the landlord is not signed by Tenant R.G., which is a requirement of the direct request process, and that a participatory hearing is necessary in order to protect the procedural rights of the tenant.

I dismiss the landlord's application naming Tenant R.G. with leave to reapply.

I also note that the amount of rent on the tenancy agreement does not match the amount of rent being claimed on the 10 Day Notice.

The landlord submitted a copy of a Notice of Rent Increase form showing the rent being increased from \$780.00 to the current monthly rent amount of \$799.50 as of February 1, 2015.

The landlord did not submit any documentation to show the rent being increased from \$750.00 as required in the rental agreement to the \$780.00 on the Notice of Rent Increase form. I also note that the allowable increase for 2014 was 2.2% and that an increase of \$30.00 exceeds the maximum allowable increase for that year.

I find that this discrepancy raises questions that cannot be clarified within the purview of the Direct Request process.

I therefore dismiss the landlord's application for a Monetary Order with leave to reapply.

However, I accept the evidence before me that Tenant D.F. has 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 Tenant D.F. is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 25, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for November 2015 as of November 23, 2015.

Conclusion

The landlord's application naming Tenant R.G. is dismissed with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant D.F. Should tenant D.F. fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a Monetary Order is dismissed 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: November 25, 2015

Residential Tenancy Branch

