



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 December 02, 2015, the landlord personally served Tenant R.S. the Notice of Direct Request Proceeding. The landlord had a witness and Tenant R.S. sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 02, 2015, the landlord served Tenant J.K. the Notice of Direct Request Proceeding by personally handing it to Tenant R.T., an adult who resides with Tenant J.K. The landlord had Tenant R.T. and a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service.

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 ON October 07, 2011, and the tenants on October 06, 2011, indicating a monthly rent of \$1,100.00, due on the first day of the month for a tenancy commencing on October 07, 2011;
- 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 October 15, 2015, and posted to the tenants' door on October 15, 2015, with a stated effective vacancy date of October 25, 2015, for \$1,350.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was posted to the tenants' door at 6:30 p.m. on October 15, 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on October 18, 2015, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,100.00 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, October 28, 2015.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenant, only when considering an Order of Possession for the landlord.

I find that the Notice of Direct Request Proceedings were both personally served to Tenant R.S. and that the service requirement of section 89 (1) of the *Act* has only been met in regards to Tenant R.S.

Based on the written submission of the landlord and in accordance with section 89 (1) of the *Act*, I find that Tenant R.S. has been duly served with the Notice of Direct Request Proceeding documents on December 02, 2015.

Based on the written submission of the landlord and in accordance with section 89 (2) of the *Act*, I find that Tenant J.K. has been duly served with the Notice of Direct Request Proceeding documents on December 02, 2015, in consideration of the Order of Possession only.

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.

I find that the Monetary Order Worksheet submitted by the landlord is not clear in identifying the rent owing and paid by the tenant from August 2015 until October 2015, and I am not able to reconcile the total amount of rent owing to the landlord.

For the above reasons, the monetary portion of the landlord's application is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of November 27, 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: December 17, 2015

Residential Tenancy Branch

