



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 landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 16, 2015, the landlords personally served Tenant K.W. by handing the documents to Tenant C.J. S-B. The landlords had Tenant C. J. S-B sign the Proof of Service of the Notice of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlords and in accordance with sections 89(2) of the *Act*, I find that Tenant K.W. has been duly served with the Direct Request Proceeding documents on December 16, 2015.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to Tenant K.W.;

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on June 15, 2015, indicating a monthly rent of \$1,000.00, due on the first day of the month for a tenancy commencing on June 15, 2015;
- 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 December 7, 2015, and personally served to the tenants on December 7, 2015, with a stated effective vacancy date of December 17, 2015, for \$1,000.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the 10 Day Notice was personally served to the tenants at 8:00 pm on December 7, 2015. The landlords had the tenant sign the Proof of Service Notice to End Tenancy to confirm personal service. 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 December 7, 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.

I find that the name of one of the tenants on tenancy agreement does not match the tenant's name on the 10 Day Notice that has been submitted by the landlords. The landlords have included both C. J. S-B. and C. S-B. on the Application for Dispute Resolution. As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented that I am issuing the decision and orders in the correct name. The discrepancy in the tenant's name raises a question that can only be answered by addressing the issue through a participatory hearing.

I therefore dismiss the landlords' application naming Tenant C. J. S-B and Tenant C. S-B. with leave to reapply.

In this type of matter, the landlords must prove they served the tenant 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 the issuance of an Order of Possession for the landlord.

I find that the landlords have served Tenant K.W. the Notice of Direct Request Proceeding by handing it to Tenant C. J. S-B., an adult who apparently resides with the tenant, and for this reason, the monetary portion of the landlord's application naming Tenant K.W. is dismissed with leave to reapply.

However, I accept the evidence before me that Tenant K.W. 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 K.W. 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, December 17, 2015.

Therefore, I find that the landlords are entitled to an Order of Possession, for unpaid rent owing for December 2015 as of December 15, 2015.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on Tenant K.W. Should Tenant K.W. 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 landlords' application for an Order of Possession naming Tenant C. J. S-B and C. S-B with leave to reapply.

I dismiss the landlords' 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 18, 2015

Residential Tenancy Branch

