



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 two signed Proof of Service of the Notice of Direct Request Proceedings which declares that on December 16, 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 December 21, 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 landlords on January 15, 2015, and the tenants on January 12, 2015, indicating a monthly rent of \$2,800.00, due on the first day of the month for a tenancy commencing on January 24, 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 December 02, 2015, and posted to the tenant's door on December 02, 2015, with a stated effective vacancy date of December 15, 2015, for \$2,800.00 in unpaid rent.
- A second copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 02, 2015, and posted to the tenant's door on December 02, 2015, with a stated effective vacancy date of December 15, 2015, for \$700.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notices were posted to the tenants' door at 7:45 p.m. on December 02, 2015. The 10 Day Notices state 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 Notices on December 05, 2015, three days after their posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$2,800.00 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 effective date of the 10 Day Notice, December 15, 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.

I find that the second 10 Day Notice that was issued to the tenants, in the amount of \$700.00 for unpaid rent due on January 23, 2015, raises a question as to why this

amount of unpaid rent was not addressed by the landlord until eleven months after the event occurred. I find that this question can only be addressed in a participatory hearing, and for this reason, the monetary portion of the landlord's application concerning unpaid rent from January 2015 is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$2,800.00, the amount claimed by the landlord for unpaid rent owing for December 2015, as of December 11, 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,800.00 for rent owed for December 2015. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the monetary portion of the landlord's application concerning unpaid rent from January 2015, 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 23, 2015

Residential Tenancy Branch

