Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED
and [tenant name suppressed to protect privacy]

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 Proceeding forms which declare that on January 15, 2016, the landlord's agent "VM" served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service forms also establishes that the service was witnessed by "LG" and a signature for "LG" is included on the form.

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 January 20, 2016, 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 Notice of Direct Request Proceeding served to the tenants;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenants on September 2, 2011, indicating a monthly rent of $1,200.00 due on the first day of the month for a tenancy commencing on October 1, 2011;

- The landlord established the manner in which rent was raised from the initial $1,200.00 stated in the tenancy agreement to the current amount of $1,330.00 by providing copies of "Notice of Rent Increase" forms provided to the tenants during the course of the tenancy;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of $1,330.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of January 2016;

- A letter from the landlord, dated January 8, 2016, in which the tenants are notified of a returned NSF cheque which the tenants had provided as attempted payment for the month of January 2016;

- A copy of a rental ledger titled "Resident Statement" which establishes the payments received and outstanding balance with respect to the tenancy;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 8, 2016, which the landlord states was served to the tenants on January 8, 2016, for $1,395.00 in unpaid rent due on January 1, 2016, with a stated effective vacancy date of January 8, 2016. The landlord has indicated on the monetary worksheet that the amount of $1,395.00 includes additional fees owed for parking and storage services. Reimbursement for additional fees, such as parking and storage fees, cannot be sought by way of the Direct Request process, and the landlord's monetary worksheet demonstrates that only the balance of unpaid rent, in the amount of $1,330.00 is being claimed via the monetary Order request;

- A copy of the Proof of Service of the Notice showing that the landlord's agent "LG" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "DT" on January 8, 2016. The personal service was confirmed as the tenant "DT" acknowledged receipt of the Notice by signing the Proof of Service form. The Proof of Service form establishes that the service was witnessed by "VM" and a signature for "VM" is included on the form.

The Notice restates section 46(4) of the Act which provides that the tenants had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenants did not apply to dispute the Notice within

five days from the date of service and the landlord alleged that the tenants did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on January 8, 2016.

I find that the tenants were obligated to pay monthly rent in the amount of $1,330.00, as the landlord has established that the monthly rent amount was raised from the initial amount of $1,200.00, as established in the tenancy agreement, to the current amount of $1,330.00. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of $1,330.00, comprised of the balance of unpaid rent owed for the month of January 2016. I find that the tenants received the Notice on January 8, 2016. I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 Notice, January 18, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of $1,330.00 for unpaid rent owing for January 2016, as of January 15, 2016.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 $1,330.00 for unpaid rent owing for January 2016. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: January 22, 2016

Residential Tenancy Branch