



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 19, 2016, at 3:30 PM, the landlord’s agent “MS” served the tenant “AM” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “AM” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “AM” has been duly served with the Direct Request Proceeding documents on January 19, 2016.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 20, 2016, at 10:05 AM, the landlord’s agent “MS” served the tenant “HJ” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenant “HJ” acknowledged receipt of the Notice of Direct Request Proceeding by signing the Proof of Service form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “HJ” has been duly served with the Direct Request Proceeding documents on January 20, 2016.

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 April 18, 2013, indicating a monthly rent of \$875.00 due on the first day of the month for a tenancy commencing on May 1, 2013;
- 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 \$896.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of January 2016;
- The landlord established the manner in which the monthly rent was raised from the initial \$875.00 stated in the tenancy agreement to the current amount of \$896.00 by providing a copy of a "Notice of Rent Increase" form, dated September 23, 2014, provided to the tenants during the course of the tenancy;
- A copy of a rental ledger titled "tenant inquiry" 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 7, 2016, which the landlord states was served to the tenants on January 7, 2016, for \$981.00 in unpaid rent due on January 1, 2016, with a stated effective vacancy date of January 11, 2016. The landlord has provided a written statement to indicate that the amount of \$981.00 listed on the Notice includes a \$25.00 late fee, a \$25.00 NSF fee, and \$35.00 fee for parking. Reimbursement for additional fees, such as late fees, NSF fees, and parking fees cannot be sought by way of the Direct Request process, and the landlord's statement demonstrates that the additional fees are not being sought as part of the monetary order claimed under the Direct Request application;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "MS" served the Notice to the tenants by way of posting it to the door of the rental

unit at 4:00 PM on January 7, 2016. The Proof of Service establishes that the service was witnessed by "NJ" and a signature for "NJ" 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 provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on January 10, 2016, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$896.00, as the landlord has established that the monthly rent amount was raised from the initial amount of \$875.00, as established in the tenancy agreement, to the current amount of \$896.00. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$896.00, comprised of the balance of unpaid rent owed for the month January 2016. I find that the tenants received the Notice on January 10, 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 corrected effective date of the Notice, January 20, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$896.00, comprised of the balance of unpaid rent owed for the month January 2016, as of January 19, 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 \$896.00, comprised of the balance of unpaid rent owed for the month

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 26, 2016

Residential Tenancy Branch

