



Dispute Resolution Services

Page: 1

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 21, 2015, the landlord’s agent “CC” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 form also establishes that the service was witnessed by the landlord “JC” and a signature for “JC” 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 tenant has been deemed served with the Direct Request Proceeding documents on December 26, 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord "JC" and the tenant on September 30, 2015, indicating a monthly rent of \$965.00 due on the first day of the month for a tenancy commencing on October 01, 2015. Although an individual identified as "CC" is included on the application for dispute resolution as an applicant landlord, "CC" is not listed as a landlord on the tenancy agreement. As neither the name nor signature for "CC" appears on the tenancy agreement to demonstrate that "CC" entered into a tenancy agreement with the tenant, I will consider the application with "JC" being the sole landlord;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,296.00, comprised of the balance of unpaid rent owing for the months of November 2015 and December 2015. The landlord indicates that there is a balance of unpaid rent in the amount of \$445.00 owing for November 2015, and a balance of unpaid rent in the amount of \$851.00 owing for December 2015. The landlord indicates that partial payments totaling \$520.00 were provided as of November 08, 2015 for the month of November 2015, and a partial payment of \$114.00 was provided on December 04, 2015;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated November 06, 2015, which the landlord states was served to the tenant on November 06, 2015, for \$875.00 in unpaid rent due on November 01, 2015, with a stated effective vacancy date of November 16, 2015; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant by way of personal service via hand-delivery at 5:00 PM on November 06, 2015. The Proof of Service form establishes that the service was witnessed by "CC" and a signature for "CC" is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant 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 tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant 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 tenant was duly served with the Notice on November 06, 2015.

I find that there is a discrepancy in the amount of outstanding rent listed on the landlord's monetary order worksheet and the amount indicated on the Notice issued to the tenant for rent due by November 01, 2015. The sum of the rent owed and partial payments received, as indicated on the monetary worksheet, results in a balance of unpaid rent in the amount of \$1,296.00. The balance of rent owed in the amount of \$1,296.00 relies on the inclusion of the balance of unpaid rent owed for the months of November 2015 and December 2015.

However, the Notice issued to the tenant on November 06, 2015 alerts the tenant to the amount of unpaid rent due by November 01, 2015. In a Direct Request proceeding, a landlord cannot pursue rent owed for a period beyond the date on which the Notice indicates that rent was due by, in this case, November 01, 2015. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from unpaid rent owed for December 2015. For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for the month of December 2015 with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the November 06, 2015 Notice issued to the tenant for unpaid rent owed by November 01, 2015.

I find that the tenant was obligated to pay monthly rent in the amount of \$965.00, as established in the tenancy agreement. I accept the evidence before me that with respect to rent owed for November 2015, the tenant has failed to pay outstanding rental arrears in the amount of \$445.00, comprised of the balance of unpaid rent owed for the month of November 2015. I find that the tenant received the Notice on November 06, 2015. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, November 16, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$445.00, comprised of the balance of unpaid rent owed for the month of November 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 \$445.00, comprised of the balance of unpaid rent owed for the month of November 2015. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: February 12, 2016

Residential Tenancy Branch

