



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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord’s agent “JK” served the tenant with the Notice of Direct Request Proceeding via registered mail on February 05, 2016. Although the landlord has indicated that the documents were served by way of registered mail, the evidentiary material provided by the landlord demonstrates that the landlord used a similar mail delivery service provided by “FedEx”.

The landlord provided a copy of a FedEx waybill which provides the details and tracking number associated with the mail service provided by FedEx. The information provided on the waybill demonstrates that the FedEx mail item was addressed to the tenant and included the address of the rental unit as the destination address for delivery.

The FedEx website provides details associated with the tracking number for the mailed item which demonstrates that the mailed item was received and subsequently signed-for on February 09, 2016 by an individual bearing the same last name as the tenant. Section 71 of the *Act* provides, in part, the following:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

In the Direct Request process, the landlord 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 subsections 89(1) and (2) of the *Act*, which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a

landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

Although the landlord did not use a mail service provided by Canada Post, I find that the evidentiary material before me demonstrates that the method of service undertaken by the landlord is sufficiently similar to the registered mail service provided by Canada Post to allow me to exercise my discretion under section 71(2)(b) of *Act* to find that the tenant has been sufficiently served for the purposes of the *Act*. The information provided by the landlord on the FedEx waybill demonstrates that the item was addressed to the tenant at the address of the rental unit, and further, similar to the service provided by Canada Post, a signature was provided by the recipient to serve as confirmation of delivery.

Therefore, I find that, in accordance with section 71(2)(b) of the *Act*, the tenant has been served with the served with the Direct Request Proceeding documents on February 09, 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:

- 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's agent and the tenant on August 31, 2015, indicating a monthly rent of \$1,200.00 due on the last day of the month preceding the month for which rent is due, for a tenancy commencing on September 01, 2015;
- 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 \$1,200.00 for unpaid rent due by December 31, 2015 for the month of January 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 04, 2016, which the landlord states was served to the tenant on January 04, 2016, for \$1,200.00 in unpaid rent due on December 31, 2015, with a stated effective vacancy date of January 14, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent PK served the Notice to the tenant by way of personal service via hand-delivery at 12:00 PM on January 04, 2016. The Proof of Service form establishes that the service was witnessed by "JJ" and a signature for JJ 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 January 04, 2016.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,200.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$1,200.00 for unpaid rent due by December 31, 2015 for the month of January 2016. I find that the tenant received the Notice on January 04, 2016. 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, January 14, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,200.00 for unpaid rent due by December 31, 2015 for the month of January 2016.

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 \$1,200.00 for unpaid rent owed for the month of January 2016. 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 10, 2016

Residential Tenancy Branch

