



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on February 25, 2016, the landlord’s agent “GD” served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on February 25, 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*?

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 and the tenants on October 06, 2009, indicating a monthly rent of \$1,300.00 due on the first day of the month for a tenancy commencing on November 01, 2009;

- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that there was unpaid rent owing in the amount of \$700.00, comprised of the balance of unpaid rent owed for the months of January 2016 and February 2016. The landlord indicates that a partial payment of \$1,300.00 was received on January 22, 2016, and a partial payment of \$800.00 was received on February 12, 2016;
- Copies of receipts which demonstrate that partial payments were provided by the tenants and were acknowledged by the landlord. The landlord provided a copy of a receipt dated January 04, 2016 indicating that a partial payment of \$1,300.00 was received. The landlord provided a copy of a receipt dated February 22, 2016 indicating that a partial payment of \$700.00 was received;
- A letter from the landlord, dated February 22, 2016, addressed to the tenants, in which the landlord acknowledges that the tenants were served a Notice to end tenancy for unpaid rent, and that the Notice was not cancelled. The landlord indicated that in the interim, the tenancy was being acknowledged based on a use and occupancy provision and the tenants were asked to vacate the rental unit;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 12, 2016, which the landlord states was served to the tenants on February 12, 2016, for \$700.00 in unpaid rent due on February 01, 2016, with a stated effective vacancy date of February 22, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "DT" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "JS" at 5:00 PM on February 12, 2016. The Proof of Service form establishes that the service was witnessed by "GK" and a signature for "GK" 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 February 12, 2016.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,300.00, as established in the tenancy agreement. I accept the evidence before me that the tenants had failed to pay outstanding rental arrears in the amount of \$700.00, comprised of the

balance of unpaid rent owed for the months of January 2016 and February 2016, at the time at which the February 12, 2016 Notice for unpaid rent was issued. I find that the tenants received the Notice on February 12, 2016. I accept the landlord's undisputed evidence and find that the tenants 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.

The landlord has provided evidence to demonstrate that the tenants did subsequently provide payment, in the amount of \$700.00, on February 22, 2016. However, the payment was not provided within five days of receipt of the Notice. The landlord later provided a letter to the tenants indicating that the tenancy would proceed in the interim based on receipt of the payment for use and occupancy only, and that the Notice was not deemed to be cancelled. I find that the February 22, 2016 letter sufficiently notified the tenants that the tenancy had not been reinstated.

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, February 22, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 12, 2016 Notice served to the tenant for unpaid rent.

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.

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: March 08, 2016

Residential Tenancy Branch

