



Dispute Resolution Services

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 February 27, 2016, the landlord's agent "SB" 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.

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 March 03, 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:

- 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 November 13, 2015, indicating a monthly rent of \$740.75 due on the first day of the month for a tenancy commencing January 01, 2016;
- 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 \$881.50 for outstanding rent, comprised of the balance of unpaid rent owing for the months of January 2016 and February 2016. The landlord indicates that partial payments totaling \$650.00 were provided in January 2016. The landlord indicates that the manner in which the balance of unpaid rent owed for this period was calculated includes a late fee of \$25.00 for each of January 2016 and February 2016, totaling \$50.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 04, 2016, which the landlord states was served to the tenant on February 04, 2016, for \$856.50 in unpaid rent due on February 01, 2016, with a stated effective vacancy date of February 16, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "KK" served the Notice to the tenant by way of posting it to the door of the rental unit on February 04, 2016. The Proof of Service form establishes that the service was witnessed and a signature for the witness 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 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 tenant is 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 tenant is deemed to have received the Notice on February 07, 2016, three days after its posting.

As part of the monetary claim established on the monetary order worksheet, the landlord has included a fee for which reimbursement cannot be sought by way of the Direct Request process. The monthly rent owed is \$740.75, and the information provided on the monetary worksheet demonstrates that the balance of unpaid rent owing for January 2016 and February 2016 is \$831.50. The landlord has also added to this amount a late fee of \$25.00 for each of January 2016 and February 2016, totaling \$50.00, which results in a total monetary claim in the sum of \$881.50. As reimbursement for additional fees, such as late payment fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim

which arises from unpaid rent for the period of January 2016 to February 2016, in the amount of \$831.50.

I find that the tenant was obligated to pay monthly rent in the amount of \$740.75, 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 \$831.50, comprised of the balance of unpaid rent owing for the months of January 2016 and February 2016. I find that the tenant received the Notice on February 07, 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 corrected effective date of the Notice, February 17, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$831.50, comprised of the balance of unpaid rent owing for the months of January 2016 and February 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 \$831.50, comprised of the balance of unpaid rent owing for the months of January 2016 and February 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: March 04, 2016

Residential Tenancy Branch