



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 on February 29, 2016, at 4:45 PM, the landlord’s agent served the tenant “TJ” with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “CW” and a signature for “CW” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant “TJ” has been duly served with the Direct Request Proceeding documents on February 29, 2016.

The landlord has not provided a signed Proof of Service of the Notice of Direct Request Proceeding for the tenant “JJ” and has not established that tenant “JJ” has been served the Notice of Direct Request Proceeding. Therefore, I dismiss the landlord’s application against the tenant “JJ” with leave to reapply. I will hear the landlord’s application against tenant “TJ” only.

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 "TJ";
- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant "TJ" on April 01, 2015, and signed by the tenant "JJ" in October 2015, indicating a monthly rent of \$750.00 due on the first day of the month for a tenancy commencing on April 01, 2015;
- 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 \$385.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of February 2016. The landlord indicates that a partial payment of \$365.00 was provided on February 07, 2016;
- A copy of a receipt which demonstrates that a partial payment of \$365.00 was provided by the tenant "TJ" on February 07, 2016, and was acknowledged by the landlord as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 02, 2016, which the landlord states was served to the tenants on February 02, 2016, for \$750.00 in unpaid rent due on February 01, 2016, with a stated effective vacancy date of February 12, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "ET" served the Notice to the tenants by way of posting it to the door of the rental unit at 10:15 PM on February 02, 2016. The Proof of Service establishes that the service was witnessed by "CW" and a signature for "CW" 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 February 05, 2016, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$750.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$385.00, comprised of the

balance of unpaid rent owing for the month of February 2016. I find that the tenants received the Notice on February 05, 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.

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, February 15, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$385.00, comprised of the balance of unpaid rent owing for the month of February 2016, as of February 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 \$385.00, comprised of the balance of unpaid rent owing for the month of February 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: March 02, 2016

Residential Tenancy Branch

