



Dispute Resolution Services

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 a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 04, 2016, the landlord’s agent “TB” served the tenant “SD” 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 “SD” has been deemed served with the Direct Request Proceeding documents on March 09, 2016, the fifth day after their registered mailing.

The landlord submitted a second signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 04, 2016, the landlord’s agent “TB” served the respondent “JD” 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 respondent “JD” has been deemed served with the Direct Request Proceeding documents on March 09, 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*?

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 and the tenant on June 10, 2015, indicating a monthly rent of \$750.00 due on the 15th day of the month for a tenancy commencing on June 15, 2015. Although a second individual, identified as "JD", is listed as a respondent tenant on the application form, neither the name nor signature for "JD" appears on the tenancy agreement to demonstrate that "JD" endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord's application against the tenant "SD" only.
- The landlord provided a document titled "Addendum", dated February 12, 2016, in which the landlord indicates that the landlord, along with the tenant "SD" and respondent "JD" had agreed that "JD" would be added to the tenancy agreement as a tenant. However, this document is not signed by either "SD" or "JD" to demonstrate that they endorsed the provisions established in the addendum to add "JD" to the tenancy agreement as a tenant. Only the signature of the landlord appears on the addendum. Therefore, I find that the landlord has not demonstrated that "JD" endorsed the terms of the tenancy agreement or agreed to be subsequently added to the tenancy agreement by way of an addendum. Therefore, I will consider the landlord's application against the tenant "SD" only;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owing in the amount of \$750.00, comprised of the balance of unpaid rent owed as of February 15, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 21, 2016, which the landlord states was served to the tenant on February 21, 2016, for \$750.00 in unpaid rent due on February 15, 2016, with a stated effective vacancy date of March 02, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenant on February 21, 2016, by way of leaving the Notice with an adult who apparently lives with the tenant. The landlord indicates that the Notice was left with the individual "JD", identified as a second respondent on the application form, and who the landlord indicates resides at the rental unit. The Proof of Service form establishes that the service was witnessed by "SD" and a signature for "SD" 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 served with the Notice on February 21, 2016.

I find that the tenant was 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 tenant has failed to pay outstanding rental arrears in the amount of \$750.00, comprised of the balance of unpaid rent owed as of February 15, 2016. I find that the tenant received the Notice on February 21, 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, March 02, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession based on the February 21, 2016 Notice served to the tenant for unpaid rent owed as of February 15, 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.

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 10, 2016

Residential Tenancy Branch