



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 18, 2016, the landlord’s agent “AG” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants have been deemed served with the Direct Request Proceeding documents on March 23, 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:

- 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's agent and the tenants on January 15, 2011, indicating a monthly rent of \$1,800.00 due on the first day of the month for a tenancy commencing on January 15, 2011;
- 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 \$22,256.88 for outstanding rent, comprised of the balance of unpaid rent owing for the period of February 2015 to March 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 01, 2016, which the landlord states was served to the tenants on March 01, 2016, for \$22,256.88 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 17, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "AG" served the Notice to the tenants by way of registered mail on March 01, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

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 registered mail, the tenants are deemed to have received the Notice five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on March 06, 2016, five days after its registered mailing.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the first day of each month. Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the first day of each month for a tenancy commencing on January 15, 2011. Therefore, in accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, the landlord's earliest opportunity to issue the Notice to the tenant for unpaid rent owing for March 2016 would have been on the second day of March 2016.

According to the monetary worksheet provided by the landlord, the landlord is seeking a monetary Order arising from unpaid rent owed for the period of February 2015 to March 2016. As the landlord issued the Notice, dated March 01, 2016, on March 01, 2016, the same day of the month on which the monthly rent is due, I find that the landlord has issued the Notice to the tenant, with respect to unpaid rent owed for March 2016, earlier than permitted under section 46 of the *Act*.

Therefore, with respect to unpaid rent owed for March 2016, I find that the Notice is not in compliance with the provisions of section 46 of the *Act* and that it is not open to the landlord to seek an Order of Possession and a monetary Order based on unpaid rent owed for March 2016. Based on the foregoing, I dismiss the portion of the landlord's application for a monetary Order with respect to unpaid rent owed for the month of March 2016 with leave to reapply.

However, the information provided on the monetary worksheet provides that the amount of \$22,256.88 indicated on the Notice, dated March 01, 2016, is comprised of the

balance of unpaid rent owed for the period of February 2015 to March 01, 2016. Therefore, it remains open for the landlord to pursue an Order of Possession and a monetary Order based on unpaid rent arising from the outstanding rent owed for the months prior to March 2016, as I find that the 10 Day Notice to End Tenancy for Unpaid Rent served on March 01, 2016 for the portion of unpaid rent owed for the months prior to March 2016 has been served in accordance with the *Act*. If the unpaid rent owed for the month of March 2016 is subtracted from the total amount of unpaid rent, in the amount of \$22,256.88, as indicated on the monetary worksheet, it yields a balance of unpaid rent in the amount of \$20,456.88 as owing for the period of February 2015 to February 2016.

The Notice issued to the tenant, under the section where the tenant is given a 10-day notice to vacate the rental unit, provides a slightly incorrect address for the rental unit, as the address entered in that field is slightly different than the address for the rental unit as indicated on other documents included as part of this application, such as the application for dispute resolution and the tenancy agreement. I have amended this address to match all other information provided for the address as per Section 68(1) of the *Act* as it is reasonable to do so under the circumstances.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,800.00, 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 \$20,456.88, comprised of the balance of unpaid rent owing for the period of February 2015 to February 2016. I find that the tenants received the Notice on March 06, 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 effective date of the Notice, March 17, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$20,456.88, comprised of the balance of unpaid rent owing for the period of February 2015 to February 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 \$20,456.88 for unpaid rent. 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 24, 2016

Residential Tenancy Branch

