



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 March 14, 2016, the landlord's agent "BW" 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 19, 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 July 02, 2014, indicating a monthly rent of \$900.00 due on the first day of the month for a tenancy commencing on August 01, 2014;
- The landlord established the manner in which the monthly rent was raised from the initial \$900.00 stated in the tenancy agreement to the current amount of \$920.00 by providing a copy of a "Notice of Rent Increase" form provided to the tenant during the course of the tenancy;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$920.00 for outstanding rent, comprised of the balance of unpaid rent owing for March 2016;
- A copy of a receipt, dated March 11, 2016, which demonstrates that a payment of \$945.00 was provided by the tenant, 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 March 02, 2016, which the landlord states was served to the tenant on March 02, 2016, for \$920.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 12, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "BW" served the Notice to the tenant by way of posting it to the door of the rental unit at 6:54 PM on March 02, 2016. The Proof of Service form establishes that the service was witnessed by "PW" and a signature for "PW" 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 March 05, 2016, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$920.00, as the landlord has established that the monthly rent amount was raised from the initial amount of \$900.00, as established in the tenancy agreement, to the current amount of \$920.00. I accept the evidence before me that, at the time that the landlord filed an application for dispute resolution, the tenant had failed to pay outstanding rental arrears in the amount of \$920.00, comprised of the balance of unpaid rent owed for the month of March 2016. I find that the tenant received the Notice on March 05, 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, March 15, 2016.

The tenancy agreement included as part of the application before me includes a term which provides that a late fee of \$25.00 would be charged to the tenant for late payment of rent. The landlord provided a copy of a receipt, dated March 11, 2016, which demonstrates that a payment of \$945.00 was provided by the tenant, and was acknowledged by the landlord as being received for use and occupancy only. The monthly rent, which was initially unpaid for March 2016, was \$920.00. If the late fee of \$25.00 is added to the monthly rent, it would yield a sum of \$945.00. Based on the evidentiary material before me, I find that the receipt provided by the landlord demonstrates that the tenant has paid the balance of the unpaid rent owed for March 2016, which formed the basis of the landlord's monetary claim arising from unpaid rent. Therefore, I dismiss the landlord's application for a monetary Order based on unpaid rent owed for March 2016 with leave to reapply.

However, as the tenant provided payment of the late rent beyond the five days provided after receipt of the Notice, as provided by the *Act*, it remains open to the landlord to accept the late payment for use and occupancy only and pursue an Order of Possession based on the March 02, 2016 Notice initially issued to the tenant for unpaid rent. Therefore, I find that the landlord is entitled to an Order of Possession based on the March 02, 2016 Notice served to the tenant for unpaid rent owing for March 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.

I dismiss the landlord's application for a monetary Order with leave to reapply. 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 21, 2016

Residential Tenancy Branch

