



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 Proceedings which declares that on March 17, 2016, the landlord sent the tenants the Notices of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 22, 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 Notices of Direct Request Proceeding served to the tenants;
- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on October 17, 2015, indicating a monthly rent of \$1,550.00, due on the first day of the month for a tenancy commencing on October 15, 2015;

- A Monetary Order Worksheet showing the rent owing and paid during this tenancy. The Monetary Order Worksheet noted that \$600.00 of the \$3,100.00 identified as owing in the 10 Day Notice was paid on February 12, 2016; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 22, 2016, and personally handed to Tenant B.W. on February 22, 2016, with a stated effective vacancy date of March 03, 2016, for \$3,100.00 in unpaid rent and \$499.31 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to Tenant B.W. at 4:45 p.m. on February 22, 2016. The 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on February 22, 2016.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,550.00 as per the tenancy agreement. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not dispute the 10 Day Notice within that 5 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 10 Day Notice, March 03, 2016.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that there is no written demand in the landlord's evidence submissions which would allow the landlord to treat the utilities as unpaid rent. Although the landlord has provided e-mail exchanges between the landlord and the tenant, this is not considered written demand under the *Act*. I further find that the tenancy agreement does not clearly indicate the tenant's responsibilities concerning utilities, which is necessary in a direct request proceeding.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. Therefore, within the purview of the Direct Request process, I cannot hear the portion of the landlord's application for a monetary claim arising from rent owed for March 2016.

For this reason, I dismiss the portion of the landlord's monetary claim for unpaid rent owing from March 2016, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$3,100.00, for unpaid rent owing for January 2016 and February 2016, as of March 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$3,100.00 for rent owed for January 2016 and February 2016. The landlord is provided with this Order 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the landlord's monetary claim for unpaid rent owing from March 2016, 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 23, 2016

Residential Tenancy Branch

