



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 April 13, 2016, at 5:30 PM, the landlord served each of the above-named tenants with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by “LS” and a signature for “LS” is included on the forms. The personal service was confirmed as the tenants acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on April 13, 2016.

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 and the tenants on July 19, 2015, indicating a monthly rent of \$1,495.00 due on the first day of the month;
- 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 \$1,495.00 for outstanding rent, comprised of the balance of unpaid rent owing for the month of April 2016;
- A copy of a cheque, dated April 05, 2016, provided by the tenant "GS", addressed to the landlord, in the sum of \$1,495.00, which included "April rent" in the memo field;
- A copy of a printed transaction history for a selected period from a bank account. The transaction history demonstrates that an amount of \$1,495.00 was deposited on April 05, 2016. A subsequent transaction, dated April 11, 2016, depicts that an amount of \$1,495.00 was withdrawn from the account with the description of "item rtd unpaid";
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 03, 2016, which the landlord states was served to the tenants on April 03, 2016, for \$1,495.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of April 13, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord served the Notice to the tenants by way of personal service via hand-delivery to the tenant "CD" at 9:30 AM on April 03, 2016. The personal service was confirmed as the tenant "CD" acknowledged receipt of the Notice by signing the Proof of Service 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 and find that in accordance with section 88 of the Act the tenants were duly served with the Notice on April 03, 2016.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,495.00, 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 \$1,495.00, comprised of the balance of unpaid rent owing for the month of April 2016. I find that the tenants received the Notice on April 03, 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, April 13, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,495.00, comprised of the balance of unpaid rent owing for the month of April 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 \$1,495.00 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: April 18, 2016

Residential Tenancy Branch