



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 02, 2016, at 12:00 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 "RT" and a signature for "RT" is included on the form. 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 02, 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 March 20, 2014, indicating a monthly rent of \$465.00 due on the first day of the month for a tenancy commencing on April 01, 2014;
- 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 \$2,462.00 for outstanding rent, comprised of the balance of unpaid rent owing for the period of January 2016 to March 2016. The landlord indicates that monthly rent, in the amount of \$985.00, was owed for each of January 2016, February 2016, and March 2016, and that a partial payment of \$493.00 was received on January 01, 2016, resulting in a balance of unpaid rent of \$2,462.00 for the period of January 2016 to March 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 04, 2016, which the landlord states was served to the tenants on March 04, 2016, for \$2,462.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 15, 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 posting it to the door of the rental unit at 12:30 PM on March 04, 2016. The Proof of Service establishes that the service was witnessed by "RT" and a signature for "RT" is included on the 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 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 tenants are 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 tenants are deemed to have received the Notice on March 07, 2016, three days after its posting.

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 landlord 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.

I turn to the landlord's application for a monetary Order arising from unpaid rent in the amount of \$2,462.00. The tenancy agreement provided by the landlord establishes that the monthly rent was set at \$465.00. However the documentary evidence provided by the landlord, such as the monetary order worksheet, establishes that there was monthly rent, in the amount of \$985.00, owed for each of January 2016, February 2016, and March 2016. This brings into question whether the monthly rent was raised from \$465.00 to \$985.00 during the course of the tenancy. However, the landlord has not demonstrated the manner in which the rent was increased, as the landlord has not included any copies of "Notice of Rent Increase" forms. I cannot infer that the rent was increased by way of a mutual agreement between the parties. I further find that the landlord has not provided any clarification as to why there is a discrepancy with respect to the different amounts indicated for the monthly rent amount in the tenancy agreement and on the monetary Order worksheet.

If the landlord's application for an Order of Possession based on unpaid rent is reviewed on the basis of the lower monthly rent amount, in the amount of \$465.00, as established in the tenancy agreement, it can be found that the landlord has served the March 04, 2016 Notice to the tenants in accordance with the *Act*, as the tenants did not provide any rent payments for the months of February 2016 and March 2016. I accept the evidence before me that, on a balance of probabilities, the tenants have failed to pay, in full, the monthly rent owed for the months of February 2016 and March 2016, as the landlord has demonstrated on the monetary worksheet that no rent payment was received from the tenants for those months.

I find that the tenants received the Notice on March 07, 2016. I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the 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 corrected effective date of the Notice, March 17, 2016. Therefore, I find that the landlord is entitled to an Order of Possession based on the March 04, 2016 Notice served to the tenants for unpaid rent.

While I find that, on a balance of probabilities, the tenants are in rental arrears with respect to outstanding rent owed for the period of January 2016 to March 2016, due to

the irregularities and inconsistency with respect to the manner in which the monthly rent is identified, I find I am unable to determine, within the limited scope of the Direct Request process, the correct and current amount of monthly rent owed under the tenancy, and by extension, am unable to determine the correct amount of unpaid rent owed by the tenants. Therefore, I dismiss the landlord's application for a monetary Order with leave to reapply.

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: April 04, 2016

Residential Tenancy Branch