Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 21, 2016, the landlord's agent "AM" served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit. The Proof of Service form establishes that the service was witnessed by "JK" and a signature for "JK" is included on the form.

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 April 24, 2016, three days after their posting.

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*?

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, indicating a monthly rent of $995.00 due on the first day of the month for a tenancy commencing on July 01, 2011;

- A copy of a “Notice of Rent Increase” form, dated October 26, 2015, provided to the tenant during the course of the tenancy, which demonstrates that the rent was raised to the current amount of $1,025.00.

- A Monetary Order Worksheet on which the landlord indicates that there is unpaid rent in the amount of $1,020.00, comprised of the balance of unpaid rent owed for the month of April 2016;

- A copy of a rental ledger titled “Tenant Ledger” which establishes the payments received and outstanding balance with respect to the tenancy;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 02, 2016, which the landlord states was served to the tenant on April 02, 2016, for $1,020.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of April 15, 2016; and

- A copy of the Proof of Service of the Notice showing that the landlord’s agent “JK” served the Notice to the tenant by way of posting it to the door of the rental unit on April 02, 2016. The Proof of Service form establishes that the service was witnessed by “LK” and a signature for “LK” 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 April 05, 2016, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of $1,025.00, as established in the “Notice of Rent Increase” form provided to the tenant during the course of the tenancy. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of $1,020.00, comprised of the balance of unpaid rent owed for the month of April 2016. I find that the tenant received the Notice on April 05, 2016. I accept the landlord’s undisputed evidence and find that the tenant 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, April 15, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession based on the April 02, 2016 Notice served to the tenant for unpaid rent owed for April 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.

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 29, 2016

Residential Tenancy Branch