



Dispute Resolution Services

Page: 1

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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 07, 2016, the landlord’s agent “RL” served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service. The Proof of Service forms also establishes that the service was witnessed by “MM” and a signature for “MM” 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 tenants have been deemed served with the Direct Request Proceeding documents on April 12, 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*?

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 tenants on November 18, 2011, indicating a monthly rent of \$850.00 due on the first day of the month for a tenancy commencing on November 01, 2011;
- The landlord established the manner in which the rent was raised from the initial \$850.00 stated in the tenancy agreement to the current amount of \$895.00 by providing copies of "Notice of Rent Increase" forms provided to the tenants during the course of the tenancy;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlord establishes that there was unpaid rent owed in the amount of \$35.00, comprised of the balance of unpaid rent owing for the period of January 2016 to March 2016, as of March 01, 2016. The landlord demonstrates that the outstanding balance of \$35.00 was paid on March 27, 2016, after the Notice was issued to the tenants;
- A copy of a receipt, dated March 27, 2016, which demonstrates that a partial payment of \$35.00 was provided by the tenant "BB", 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 18, 2016, which the landlord states was served to the tenants on March 18, 2016, for \$35.00 in unpaid rent due on March 01, 2016, with a stated effective vacancy date of March 30, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "RL" served the Notice to the tenants by way of posting it to the door of the rental unit at 10:30 AM on March 18, 2016. The Proof of Service establishes that the service was witnessed by "MM" and a signature for "MM" 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 21, 2016, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$895.00. I accept the evidence before me that the tenants had failed to pay outstanding rental

arrears in the amount of \$35.00, comprised of the balance of unpaid rent owing for the period of January 2016 to March 2016, as of March 01, 2016. I find that the tenants received the Notice on March 21, 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 corrected effective date of the Notice, March 31, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession based on the March 18, 2016 Notice served to the tenants for unpaid rent.

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.

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 12, 2016

Residential Tenancy Branch