



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 landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 04, 2016, the landlord “KS” served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlords provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlords, 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 May 09, 2016, the fifth day after their registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlords 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 landlords and the tenant on February 01, 2016, indicating a monthly rent of \$1,250.00 due on the first day of the month for a tenancy commencing on February 01, 2016;
- A Monetary Order Worksheet showing the rent owing and paid during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$400.00 for unpaid rent, comprised of the balance of unpaid rent owed for April 2016. The landlords indicate that a partial payment of \$850.00 was received on April 01, 2016;
- A copy of a receipt, dated April 01, 2016 which demonstrates that a partial payment of \$850.00 was provided by the tenant, and was acknowledged by the landlord "KS" as being received for use and occupancy only;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated April 02, 2016, which the landlords state was served to the tenant on April 02, 2016 for \$1,250.00 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 "MS" 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 establishes that the service was witnessed by "AS" and a signature for "AS" 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 landlords alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlords. 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 \$1,250.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$400.00, comprised of the balance of unpaid rent owed for April 2016. I find that the tenant received the Notice on April 05, 2016. I accept the landlords' 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 landlords are entitled to an Order of Possession and a monetary Order of \$400.00, comprised of the balance of unpaid rent owed for April 2016.

Conclusion

I grant an Order of Possession to the landlords 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 landlords are entitled to a monetary Order in the amount of \$400.00 for unpaid rent. The landlords are 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: May 10, 2016

Residential Tenancy Branch