



Dispute Resolution Services

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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 May 20, 2016, at 2:30 PM, the landlord’s agent “VK” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form also establishes that the service was witnessed by “KM” and a signature for “KM” is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on May 20, 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*?

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 on January 19, 2016 and signed by the tenant on January 20, 2016, indicating a monthly rent of \$1,100.00 due on the first day of the month for a tenancy commencing on February 01, 2016. The tenancy agreement also included a hand-written note stating, “rent due on 5th due to pay day”;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owing in the amount of \$1,100.00 for the month of May 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 09, 2016, which the landlord states was served to the tenant on May 09, 2016, for \$1,100.00 in unpaid rent due on May 01, 2016, with a stated effective vacancy date of May 22, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "VK" served the Notice to the tenant by way of posting it to the door of the rental unit at 11:15 AM on May 09, 2016. The Proof of Service form establishes that the service was witnessed by "KM" and a signature for "KM" 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 May 12, 2016, three days after its posting.

The tenancy agreement provided by the landlord demonstrates that the monthly rent is due on the first day of each month. However, next to the field in which the landlord has indicated that the monthly rent is due on the first day of each month, there is a hand-written note which states that "rent due on 5th due to pay day". Section 46 of the *Act* provides that the landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant after the day that rent is due. Section 46 provides, in part, the following:

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The application before me includes a tenancy agreement which demonstrates that the monthly rent is due on the first day of each month for a tenancy commencing on February 01, 2016. However, this is contradicted by the hand-written note which leaves

open the possibility that the parties may have agreed that the monthly rent is due on the 5th day of each month. In accordance with section 46 of the *Act*, if the rent remains unpaid after the day on which it is due, the earliest opportunity for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent would be the following day. In the matter before me, in consideration of the landlord's application, even if the later of the two dates provided on the tenancy agreement was taken as being the day on which the monthly rent is due, the landlord's earliest opportunity to issue the Notice to the tenant would have been on the 6th day of the month, if it was accepted that the monthly rent was due on the 5th day of the month. As the landlord issued the Notice to the tenant on the 9th day of the month, I find that the Notice for unpaid rent was served to the tenant in accordance with section 46 of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,100.00, 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 \$1,100.00, comprised of the balance of unpaid rent owed for the month of May 2016. I find that the tenant received the Notice on May 12, 2016. I accept the landlord's undisputed evidence and find that the tenant 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 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, May 22, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession based on the May 09, 2016 Notice served to the tenant for unpaid rent owing for May 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: May 26, 2016

Residential Tenancy Branch