



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on April 27, 2016, the landlord 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.

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 May 02, 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 landlord and the tenants on July 22, 2015, indicating a monthly rent of \$960.00 due on the first day of the month for a tenancy commencing on August 01, 2015;
- 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 for the month of April 2016, and that the balance of unpaid rent remained outstanding until April 21, 2016. The landlord indicates that a partial payment of \$460.00 was received on April 01, 2016, and a second payment of \$500.00 was received on April 21, 2016;
- A copy of a receipt, dated April 21, 2016, which demonstrates that a payment of \$960.00 was provided by the tenants, 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 April 02, 2016, which the landlord states was served to the tenants on April 02, 2016, for \$960.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of April 12, 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 5:30 PM on April 02, 2016. The Proof of Service establishes that the service was witnessed by "JF" and a signature for "JF" 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 April 05, 2016, three days after its posting.

I find that the tenants were obligated to pay monthly rent in the amount of \$960.00, as established in the tenancy agreement. I accept the evidence before me that the tenants had failed to pay outstanding rental arrears in the amount of \$960.00, comprised of the balance of unpaid rent owed for the month of April 2016 at the time that the Notice was issued. I find that the tenants received the Notice on April 05, 2016.

Based on the evidentiary material before me, I find that the receipt provided by the landlord demonstrates that the tenants paid the balance of unpaid rent owed for April 2016 by April 21, 2016. However, as the tenants provided payment of the balance of unpaid rent beyond the five days provided after receipt of the Notice, as provided by the *Act*, it remains open to the landlord to accept the late payment for use and occupancy only and pursue an Order of Possession based on the April 02, 2016 Notice initially issued to the tenants for unpaid rent.

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, 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 owing for April 2016.

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: May 05, 2016

Residential Tenancy Branch