



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

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on May 26, 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 31, 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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 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 on March 17, 2016 and signed by the tenants on March 18, 2016, indicating a monthly rent of \$2,850.00 due on the first day of the month for a tenancy commencing on April 01, 2016;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$5,700.00 for outstanding rent, comprised of the balance of unpaid rent owing for the

months of April 2016 and May 2016. The landlord indicates that an amount of \$2,850.00 is owed for each of April 2016 and May 2016;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 18, 2016, which the landlord states was served to the tenants on May 18, 2016, for \$5,700.00 in unpaid rent due on April 01, 2016, with a stated effective vacancy date of May 28, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "SY" served the Notice to the tenants by way of personal service via hand-delivery to the tenant "JA" at 4:45 PM on May 18, 2016. The Proof of Service form establishes that the service was witnessed by "JY" and a signature for "JY" 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 and find that in accordance with section 88 of the *Act* the tenants were duly served with the Notice on May 18, 2016.

The sum of the rent owed, as indicated on the monetary worksheet, results in a balance of rent outstanding in the amount of \$5,700.00, comprised of the balance of unpaid rent owing for April 2016 in the amount of \$2,850.00, and unpaid rent owed for May 2016 in the amount of \$2,850.00.

However, the Notice issued to the tenants on May 18, 2016 is in the amount of \$5,700.00 for unpaid rent due by April 01, 2016. In a Direct Request proceeding, a landlord cannot pursue unpaid rent owed for a period beyond the due date for unpaid rent listed on the Notice issued to the tenants, in this case, April 01, 2016. Therefore, within the purview of the Direct Request process, I cannot consider the portion of the rental arrears arising from unpaid rent owed for May 2016 and will therefore make a determination based on the amount of unpaid rent indicated as being due by April 01, 2016, as indicated on the Notice provided to the tenants.

Based on the foregoing, I dismiss the portion of the landlord's monetary claim for unpaid rent owing for May 2016, with leave to reapply. I will only consider the landlord's application for a monetary Order related to unpaid rent arising from the May 18, 2016 Notice issued to the tenants, which alerted the tenants to unpaid rent due by April 01, 2016. According to the monetary worksheet provided by the landlord, the amount of unpaid rent due by April 01, 2016 was \$2,850.00.

I find that the tenants were obligated to pay monthly rent in the amount of \$2,850.00, as established in the tenancy agreement. I accept the evidence before me that the tenants have failed to pay outstanding rental arrears in the amount of \$2,850.00, comprised of the balance of unpaid rent owed for the month of April 2016. I find that the tenants received the Notice on May 18, 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 effective date of the Notice, May 28, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$2,850.00, comprised of the balance of unpaid rent owed for the month of 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,850.00 for unpaid rent. The landlord is 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: June 01, 2016

Residential Tenancy Branch