



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 two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on May 27, 2016, the landlords served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlords 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 5 days after service. The Proof of Service forms also establish that the service was witnessed by “MA” and a signature for “MA” is included on the forms.

Based on the written submissions of the landlords, 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 June 01, 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:

- 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 landlords and the tenant "MT" on January 03, 2013, indicating a monthly rent of \$2,295.00 due on the first day of the month for a tenancy commencing on January 07, 2013. Although a second individual, identified as "NC", is named as a respondent tenant on the application form, a signature for "NC" does not appear on the tenancy agreement to demonstrate that "NC" endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the landlord's application against the tenant "MT" only;
- The landlords established the manner in which the monthly rent was raised from the initial \$2,295.00 stated in the tenancy agreement to the current amount of \$2,400.00 by providing copies of "Notice of Rent Increase" forms provided to the tenant during the course of the tenancy;
- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlords establish a monetary claim in the amount of \$2,400.00 for unpaid rent, comprised of the balance of unpaid rent owed as of May 15, 2016;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 16, 2016, which the landlords state was served to the tenant on May 16, 2016 for \$2,400.00 in unpaid rent due on May 15, 2016, with a stated effective vacancy date of May 30, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlords served the Notice to the tenant by way of posting it to the door of the rental unit on May 16, 2016. The Proof of Service establishes that the service was witnessed by "JC" and a signature for "JC" 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 May 19, 2016, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$2,400.00, as the landlords have established that the monthly rent amount was raised from the initial amount of \$2,295.00, as established in the tenancy agreement, to the current amount of \$2,400.00. I accept the evidence before me that the tenant has failed to pay outstanding rental arrears in the amount of \$2,400.00, comprised of the balance of unpaid rent owed as of May 15, 2016. I find that the tenant received the Notice on May 19, 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, May 30, 2016.

Therefore, I find that the landlords are entitled to an Order of Possession and a monetary Order of \$2,400.00, comprised of the balance of unpaid rent owed as of May 15, 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 \$2,400.00 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: June 02, 2016

Residential Tenancy Branch