



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 landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 27, 2016, the landlord’s agent 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 landlord, 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 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:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- Although an individual identified as “PR” is included on the application for dispute resolution form as an applicant landlord, “PR” is not listed as a landlord on the tenancy agreement. As neither the name nor signature for “PR” appears on the tenancy agreement to demonstrate that “PR” entered into a tenancy agreement with the tenant, I will consider the application taking into account the entity listed on the application form, which, for the purpose of this decision, will be identified as “CV”, as being the sole landlord. The landlord provided a copy of a residential tenancy agreement which was signed by an agent for the landlord “CV” and the tenant on April 05, 2016, indicating a monthly rent of \$325.00 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 \$375.00 for unpaid rent, comprised of the balance of unpaid rent owed 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 \$375.00 in unpaid rent due on May 01, 2016, with a stated effective vacancy date of May 23, 2016; and
- A copy of the Proof of Service of the Notice showing that the landlord’s agent “PR” 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 “AV” and a signature for “AV” 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 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.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher

burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

On the monetary worksheet provided by the landlord, the landlord calculates the unpaid rent owing based on monthly rent owed in the amount of \$375.00 for the month of May 2016. However the landlord has not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$325.00, as established in the tenancy agreement, to the amount of \$375.00 indicated on the monetary worksheet and on the Notice issued to the tenant, nor has the landlord provided any documentary evidence to clarify why the monthly rent for the month of May 2016 was depicted to be \$375.00 instead of \$325.00 as stated in the tenancy agreement.

The landlord has not provided any evidentiary material, such as a Notice of Rent Increase form to demonstrate that the monthly rent was increased, nor has the landlord provided any evidence to illustrate that the parties amended the terms of the tenancy agreement to agree upon a new monthly rent amount, or that the parties mutually agreed in writing on a new monthly rent amount. Therefore, in determining the monthly rent amount agreed upon by the parties, I will rely upon the information provided in the tenancy agreement, which establishes that the monthly rent amount to be paid by the tenant is \$325.00.

I find that the tenant was obligated to pay monthly rent in the amount of \$325.00, 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 \$325.00, 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 23, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$325.00, comprised of the balance of unpaid rent owed for the month of 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$325.00 for unpaid rent. The landlord is provided with these Orders in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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