



Dispute Resolution Services

Page: 1

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 Proofs of Service of the Notices of Direct Request Proceeding which declares that on August 09, 2016, the landlord personally served the tenants by leaving the Notices with Person A.A., an adult who apparently resides with the tenants. The landlord had Person A.A. and a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm this service. Based on the written submissions of the landlord and in accordance with section 89(2) of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on August 09, 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*?

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 Notices 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 September 01, 2015, indicating a monthly rent of \$1,850.00 due on the first day of the month for a tenancy commencing on September 01, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 02, 2016, and left with an adult who apparently resides with the tenants on August 02, 2016, with a stated effective vacancy date of August 11, 2016, for \$1,850.00 in unpaid rent and \$51.05 in unpaid utilities.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left with an adult who apparently resides with the tenants at 3:00 p.m. on August 02, 2016. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on August 02, 2016.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,850.00, as per the tenancy agreement.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 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 10 Day Notice, August 12, 2016.

In this type of matter, the landlord must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenants.

Section 89(2) of the *Act* does allow for the Notice of Direct Request Proceeding to be left with an adult who apparently resides with the tenants, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Notices of Direct Request Proceeding to an adult who apparently resides with the tenants, and for this reason, the monetary portion of the landlord's application is dismissed with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing for August 2016 as of August 09, 2015.

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.

I dismiss the landlord's application for a monetary Order, with leave to reapply.

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: August 11, 2016

Residential Tenancy Branch

