



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 Proof of Service of the Notice of Direct Request Proceedings which declares that on August 22, 2016, the landlord personally served Tenant S.M. and Tenant M.K. the Notices of Direct Request Proceeding. The landlord had a witness sign the respective Proofs of Service of the Notice of Direct Request Proceeding for each tenant to confirm personal service. Based on the written submissions of the landlord and in accordance with section 89 of the *Act*, I find that Tenant S.M. and Tenant M.K. have been duly served with the Direct Request Proceeding documents on August 22, 2016, the day it was personally served to them.

The landlord submitted a third signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 23, 2016, the landlord sent Tenant K.K. the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that Tenant K.K. will be deemed served with the Direct Request Proceeding documents on August 28, 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:

- Three 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, Tenant S.M. and Tenant M.K. on October 04, 2015, indicating a monthly rent in the amount of \$1,600.00, due on the first day of the month for a tenancy commencing on November 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 04, 2016, and left in the mailbox at the tenant's residence on August 04, 2016, with a stated effective vacancy date of August 23, 2016, for \$1,600.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was left in the mailbox at the tenant's residence at 4:00 p.m. on August 04, 2016. The 10 Day Notice states that the tenants 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 sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on August 07, 2016, three days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$1,600.00, 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 effective date of the 10 Day Notice, August 23, 2016.

I find that Tenant K.K. is not named on and has not signed the tenancy agreement, which is a requirement of the direct request process. For this reason, the monetary portion of the landlord's application, naming Tenant K.K. as a respondent is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order in the amount of \$1,600.00, the amount claimed by the landlord, for unpaid rent owing for August 2016, as of August 18, 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 \$1,600.00 for rent owed for August 2016. The landlord is provided with this Order in the above terms and Tenant S.M. and Tenant M.K. must be served with **this Order** as soon as possible. Should Tenant S.M. and Tenant M.K. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the monetary portion of the landlord's application, naming Tenant K.K. as a respondent, 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 26, 2016

Residential Tenancy Branch